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No. 2799

United States

Circuit Court of Appeals

For the Ninth Circuit.

YEE CHUNG,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed
JUL 27 1916
F. D. Monckton,
Clerk.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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Names and Addresses of Attorneys.

For Appellant:

JOHN L. McNAB, Esq., San Francisco, California; and

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For Appellees:

ALBERT SCHOONOVER, Esq., United States Attorney, Los Angeles, California; and

CLYDE R. MOODY, Esq., Assistant United States Attorney, Los Angeles, California.

[4*]

Citation on Appeal.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to The United States of America, and to the Hon. Albert Schoonover, United States Attorney for the Southern District of California, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States District Court for the Southern District of California, Southern Division, wherein Yee Chung is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the

*Page-number appearing at foot of page of original certified Record.

said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable BENJAMIN F. BLEDSOE, United States District Judge for the Southern District of California, this 22d day of March, A. D. 1916.

BLEDSOE,
United States District Judge.

Service of the within citation hereby admitted this 22d day of March, 1916.

ALBERT SCHOONOVER,
United States Attorney.
M. Esq.

[Endorsed]: No. 911—Criminal. United States District Court for the Southern District of California. Yee Chung, Appellant, vs. The United States of America, Appellee. Citation on Appeal. Filed Mar. 22, 1916, at —— min. past 11 o'clock A. M. Wm. M. Van Dyke, Clerk. Murray C. White, Deputy. [5]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 911–CRIM.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

YEE CHUNG,
Defendant. [6]

Affidavit of Complaint.

UNITED STATES OF AMERICA.

Southern District of California,—ss.

BE IT REMEMBERED, that on this 15th day of July, in the year of our Lord one thousand nine hundred and fourteen before me, Chas. N. Williams, a United States Commissioner duly appointed by the District Court of the United States of America for the Southern District of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, etc., pursuant to the Acts of Congress in that behalf, personally appeared W. A. Brazie, Chinese Inspector, who, being duly sworn, according to law, deposes and says that Yee *Chong* heretofore, to wit: On the 14th day of July, in the year of our Lord one thousand nine hundred and fourteen, was found in the County of Los Angeles within the Southern Division of the Southern District of California and is now within said Division and District; that he, the said Yee Chong was, at the time of being so found as aforesaid, and is now, a Chinese person and a person of Chinese descent and a Chinese Laborer, and not lawfully entitled to be or remain in the United States.

Contrary to the form of the Statutes of the United States in such case made and provided, and against the peace and dignity of the said United States.

W. A. BRAZIE.

Sworn to and subscribed, this 15th day of July, A. D. 1914, before me.

[Seal] CHAS. N. WILLIAMS,
U. S. Commissioner. [7]

I, Chas. N. Williams, the Commissioner before whom the within complaint was verified, do hereby certify the foregoing to be a full, true and correct copy of the original affidavit of complaint, filed July 15, 1914, as the same remains of record in my office at Los Angeles, Southern District of California.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal, at Los Angeles, Southern District of California, this 15th day of July, A. D. 1914.

[Seal] CHAS. N. WILLIAMS,
United States Commissioner, Southern District of California.

[Endorsed]: No. 467. United States District Court, Southern District of California. The United States of America vs. Yee Chong. Certified Copy of Affidavit of Complaint. Albert Schoonover, Esq., United States Attorney. Filed the 15th day of July, 1914. Chas. N. Williams, United States Commissioner. [8]

Warrant of Arrest.

UNITED STATES OF AMERICA.
Southern District of California,—ss.

The President of the United States of America to the Marshal of the United States for the (Seal) Southern District of California, and to His Deputies, or Any or Either of Them, Greeting:

WHEREAS, complaint on oath hath been made to me charging that Yee Chong on or about the 14th day of July, in the year of our Lord one thousand

nine hundred and fourteen, and within the jurisdiction of the United States, and within the jurisdiction of the Honorable, the District Court of the United States, in and for the Southern District of California, was found in the County of Los Angeles, within the Southern Division of the Southern District of California, and is now within said Division and District; that he, the said Yee Chong was, at the time of being so found as aforesaid, and is now, a Chinese person and a person of Chinese descent and a Chinese laborer, and not lawfully entitled to be or remain in the United States.

NOW, THEREFORE, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Yee Chong and bring his body forthwith before me, a United States Commissioner appointed by the District Court of the United States, for the Southern District of California, at my office, in the City of Los Angeles, that he may then and there be dealt with according to law for the said offense.

GIVEN UNDER MY HAND AND SEAL, this 15th day of July in the year of our Lord one thousand nine hundred and fourteen and of our Independence the one hundred and thirty-ninth. [9]

[Seal] CHAS. N. WILLIAMS,
United States Commissioner for the Southern District of California.

Marshal's Criminal Docket No. 5731.

[Endorsed]: No. 467. U. S. District Court, Southern District of California. The United States of America vs. Yee Chong. Warrant to Apprehend.

Albert Schoonover, Esq., U. S. Attorney. Filed this 14th day of July, A. D. 1914. Chas. N. Williams, U. S. Commissioner.

In obedience to the within warrant, I have the body of Yee Chong before C. N. Williams, Esq., U. S. Commissioner, this 15th day of July, 1914.

C. T. WALTON,
U. S. Marshal.
By A. C. Sittel,
Deputy. [10]

UNITED STATES OF AMERICA.

Southern District of California,
Southern Division.

No. 467.

Before the Honorable CHAS. N. WILLIAMS,
United States Commissioner.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

YEE CHUNG,
Defendant.

Notice of Appeal from Order of United States Commissioner.

The above-named Yee Chung, conceiving himself aggrieved by the order of deportation entered on the 9th day of January, 1915, in the above-entitled proceeding, by the Honorable Chas. N. Williams, United States Commissioner aforesaid, which order of said commissioner does direct and provide that said de-

fendant shall be deported to China, on the ground of his being now unlawfully within the United States, does hereby appeal from said order to the judge of the United States District Court for the Southern District of California, Southern Division, and to said court;

And said defendant does hereby give notice to said plaintiff herein and to said United States Commissioner of such appeal, and that the same is now and hereby taken upon question of both law and fact, and said defendant further prays that a transcript of the records and proceedings, papers and exhibits, upon which the said order was made, duly authenticated, may be sent to the said District Judge of the United States, of the said Southern District of California, Southern Division, in due course of procedure.

Dated this 9th day of January, 1915.

YEE CHUNG,
Defendant and Appellant.
ISIDORE B. DOCKWEILER,
As Attorney for Said Defendant and Appellant. [11]

Service of the foregoing notice of appeal is hereby admitted this 9th day of January, 1915.

CHAS. N. WILLIAMS,
United States Commissioner for Said District.
ALBERT SCHOONOVER,
United States Attorney.
HARRY R. ARCHBALD,
Asst. U. S. Atty.

[Endorsed]: Original. No. 911–Crim. United States of America, Southern District of California, Southern Division. The United States of America,

Plaintiff, vs. Yee Chung, Defendant. Notice of Appeal from Order of United States Commissioner. Filed Jan. 9, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Isidore B. Dockweiler, Suite 536, Douglas Bldg. Office Tel. Main 8756, Home 1320, Los Angeles, Cal., Attorney for Defendant. [12]

At a stated term, to wit, the January Term, A. D. 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Wednesday, the nineteenth day of January, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

No. 911–CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

YEE CHUNG,

Defendant.

Order Affirming Order of Deportation.

This cause having heretofore been submitted to the court for its consideration and decision on the pleadings and proofs after trial *de novo* before the court on defendant's appeal from the order of a U. S. Commissioner for deportation of defendant; and the Court having duly considered the same, and being fully advised in the premises, it is ordered that the

order of deportation of the U. S. Commissioner be, and the same hereby is affirmed, a memorandum opinion to be hereafter filed by the court herein. [13]

In the United States District Court, Within and for the Southern District of California, Southern Division.

No. 911–CRIM.

UNITED STATES OF AMERICA

vs.

YEE CHUNG.

Memorandum Opinion.

This is an appeal from an order of deportation, made by the Commissioner. I have gone over, with some particularity and care, the transcript of the evidence taken herein, and have also made careful examination of all of the exhibits.

Petitioner claims that he is a native-born citizen of the United States, even though he be of Chinese descent, and that for that reason he is entitled to a reversal of the order of deportation herein. His claim in this behalf is that he was born in San Francisco about 1880, and was the son of one Yee Kin Sing, in which event, of course, he would be entitled to remain in the United States. There is considerable evidence adduced by Chinese witnesses to the effect that the aforesaid Yee Kin Sing had a son born to him in San Francisco, at the time alleged by defendant herein, and some evidence of some Chinese witnesses to the effect that the defendant, Yee Chung, is that son.

The whole question in the case, however, centers about a determination of the claim of the defendants that he is the individual named Yee Chung, who was adjudged to be rightfully in the United States, by a Commissioner of the United States District Court, of the District in Vermont, in the month of January, 1898, and this issue is the determinative one, because [14] if it can be believed from the evidence that he is the individual mentioned in that proceeding, then it is impossible to discredit his claim that he is the son of Yee Kin Sing.

If, however, his asserted claim of having been adjudged rightfully in the United States, in Vermont, as above referred to, be without foundation in the mind of the Court, then his claim of being native-born falls to the ground, because the claimant has been completely discredited as a witness, and the order of deportation should be affirmed.

I had occasion, in an oral opinion delivered in this Court, late in January of last year, in the case of United States vs. Jee Jan, to indicate my views as to the amount of evidence that ought to be produced in behalf of a person of Chinese descent, in one of these deportation cases, in order that the requirement of the statute that the Court should be satisfied, might be had; and I see no reason to depart from the views there announced. The burden, I believe, is placed by the statute upon the defendant, and he must by the evidence adduced in his behalf "satisfy" the Court, i. e., produce moral certainty or conviction. (C. C. P. Sec. 1835) of the truthfulness of his claim. (186 U. S. 193.)

In this case, after careful consideration of the evidence as above stated, I cannot refrain from entertaining a want of satisfaction, with respect to the truthfulness of the defendant's claim, and therefore am constrained to affirm the judgment of the commissioner.

Time will not suffice to permit me to indicate the reasons for my conclusions, save with severest brevity. It is apparent, however, in the first place, that if any credence is to be given at all to the testimony of the witness Joliffe, who produced for the inspection of the Court, the records of [15] the Canadian Pacific Railway, an inspection and investigation of all of the Chinese passengers who came over on the boat on which defendant claims he sailed from Hong Kong, was had and their names taken; defendant's name, Yee Chung, appears twice upon the list, but neither of the ages given would make the name applicable to him.

There are some inconsistencies in his testimony in this behalf also; he testified in the first place that his name was asked by the Chinese interpreter at Vancouver, and afterwards denied it; he testified on two or three different occasions that he purchased a ticket from Hong Kong through to Boston, and that he showed his ticket to Boston at Vancouver; he afterwards recanted that, and claimed that his ticket was purchased only to Montreal, and that a ticket from there to Boston was furnished him by his father. His description of Commissioner Johnson does not tally with, and in fact is emphatically opposed to, the facts as proved by the United

States Inspector. Upon being shown a photograph of some individual, he at first said it was not his father, and then afterward upon the trial here stated that "It looked like him,—some resemblance to his father, but not exactly." Considering the personal acquaintance that he had with his father, as shown by the evidence, it is difficult for me to understand how he could fail to recognize the photograph if it was his father, and why he should have testified differently with respect to it, whether it was his father or not.

When arrested by officer Brazie, he claimed to have some sort of a "native paper," which was in the possession of his clansmen in San Francisco,—by this, I am led to believe some paper or certificate showing the fact that he was native-born. **[16]**

Not only did he fail to adduce such "native paper" at either of the hearings had herein, but he failed to make mention to Officer Brazie of the paper which he now claims he used as a means of going back to China in 1909. He, in fact, on that occasion displayed such an aversion to answer questions respecting his right to remain in the United States, as sorely to challenge his good faith.

These are some of the more marked inconsistencies as I view them, in the testimony and conduct of the defendant, and they lead me to entertain such doubt as to the bona fides of his claim that he was before Commissioner Johnson in Vermont in 1898, as to require me, in my judgment, to uphold the findings of the Commissioner herein.

For these reasons, the judgment of the Commis-

sioner is affirmed, and the petitioner ordered deported.

Dated, Los Angeles, California. January 19, 1916.

BLEDSOE,
Judge.

[Endorsed]: No. 911—Crim. United States District Court, Southern District of California, Southern Division. United States of America vs. Yee Chung. Memorandum Opinion. Filed Jan. 26, 1916, at 20 min. past 11 o'clock A. M. Wm. M. Van Dyke, Clerk. Murray C. White, Deputy. **[17]**

In the United States District Court Within and for the Southern District of California, Southern Division.

Hon. BENJAMIN F. BLEDSOE, Judge.

No. 911—CRIMINAL.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

YEE CHUNG,
Defendant.

Reporter's Transcript.

Vol. I. (In Pencil.) Filed Mar. 23, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. John P. Doyle, Official Reporter, Department 5, Superior Court, Los Angeles, California. **[18]**

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In the United States District Court Within and for the Southern District of California, Southern Division.

No. 911—CRIMINAL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

YEE CHUNG,

Defendant.

APPEARANCES:

ALBERT SCHOONOVER and CLYDE R. MOODY, Esquires, Attorneys for Plaintiff.

I. B. DOCKWEILER and JOHN L. McNAB, Esquires, Attorneys for Defendant.

REPORTER'S TRANSCRIPT. [20]

Proceedings Had April 2, 1915.

April 2, 10 o'clock A. M.

The COURT.—UNITED STATES vs. YEE CHUNG.

Mr. SCHOONOVER.—Ready.

Mr. DOCKWEILER.—Ready.

Mr. SCHOONOVER.—If the Court please, it may be that we can save some time by arriving at an undersanding. Counsel suggested that there were some official records that they desire. I think they said they wanted certified copies of them. Now, any records we have here are originals from the San Francisco office, and cannot be certified by this local office, but the originals are here before the Court, and upon any issue we are not willing that any part of the record or particular part that counsel for defendants may designate shall go in the record, but that all of it shall upon any issue. For instance, what they want to do is to show the attitude of the Government towards the accused, how many times he has been passed by them, and so forth. We are perfectly willing that that should be shown, together with the complete record which discloses that in May last the Department was sustained by the Secretary in holding that this man had not shown his nativity, and the finding was affirmed. Now we will stipulate the facts or we may read from the record so far as desired on either side, but we want to make a complete showing and not a partial one; and counsel makes the suggestion that for some reason—in view, I take it, of that record and the situation that it puts this defendant in with reference to the Government—that some different rule as to the burden of proof will prevail, and that we might settle before we start into the trial of the case. If for any possible reason the burden is upon

the Government, if we know it now, we will assume it. [21]

The COURT.—I am going to assume that the burden is upon the appellant unless something is shown to the contrary. I know nothing of any other rule.

Mr. SCHOONOVER.—To facilitate the matter, will counsel stipulate that the defendant here, Yee Chung, was at the time of his arrest a laborer and was found without a certificate of residence, nativity, or any other certificate?

Mr. McNAB.—I regret that we cannot stipulate to that, your Honor. We are willing to stipulate that he is a person of Chinese descent, and that his parents were not born within the United States. I do not think we can go further than that.

Mr SCHOONOVER.—The only reason I suggest it is that the record shows such stipulation was made before the Commissioner by Mr. Dockweiler.

Mr. DOCKWEILER.—Not in that form.

Mr. SCHOONOVER.—Well, whatever it may be. It was substantially in that form.

Mr. McNAB.—At any rate, we do not renew it here.

Mr. SCHOONOVER.—The stipulation before the Commissioner was—

Mr. McNAB.—In view of the fact that we do not renew it I do not see the necessity for reading it.

Mr. SCHOONOVER.—Very well, except that there is a question as to what it was. Mr. Dockweiler has suggested that it is not what I stated.

The COURT.—When they do not care to make it

now it is immaterial what stipulation they made below.

Mr. SCHOONOVER.—Very well. You may take the stand, Mr. Brazie. [22]

Testimony of W. A. Brazie, for Plaintiff.

W. A. BRAZIE, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. SCHOONOVER.)

Q. Please state your name. A. W. A. Brazie.

Q. And what is your business?

A. Chinese inspector in the United States Immigration Service at Los Angeles, California.

Q. How long have you held that position?

A. Eleven years next October.

Q. Do you know the defendant here?

A. I do.

Q. Yee Chung? A. I do.

Q. Did you take him into custody upon the charge that is now pending against him? A. I did.

Q. Who else, if anyone, was with you at that time?

A. Mr. J. R. Garrity, Clerk of the Immigration Service at Los Angeles.

Q. Where did you find Yee Chung at that time?

A. At River Station of the Southern Pacific Railroad Company in Los Angeles.

Q. Upon what date? Have you a memorandum here that will refresh your recollection?

A. The statement shows. The date has slipped my memory.

(Testimony of W. A. Brazie.)

Q. Is that the statement you refer to (handing paper to the witness)? **[23]** A. Yes, sir.

Q. What is the date? A. July 14, 1914.

Q. At what hour? A. 4:30 P. M.

Q. Where was the statement taken?

A. In the Immigration office at Los Angeles on the Fifth floor of the Federal Building.

Q. How long before you first took the defendant in custody?

A. About thirty minutes, I should say.

Q. Who, if anyone, was with him at River Station when you took him in custody?

A. I couldn't state that anyone was.

Q. Any other Chinese present?

A. No other Chinese present.

Q. Where was he, in the station building?

A. In the station building, in the waiting-room.

Q. About 4 o'clock?

A. About 4 o'clock, yes, sir. The statement was taken at 4:30. If you will allow me I will explain that prior to taking the statement—

Q. Well, that is unnecessary. How you happened to know he was there is not competent, or is not material at least. Now, state what conversation you had with the defendant at that time with reference to his presence at the point where you found him, as to whether or not he had in his possession any certificate of residence or other certificate entitling him to remain in the United States.

Mr. McNAB.—That is objected to as incompetent, irrelevant and immaterial. **[24]**

(Testimony of W. A. Brazie.)

The COURT.—The objection is overruled.

Mr. McNAB.—Exception.

Mr. DOCKWEILER.—Could we stipulate at this point, your Honor, that exceptions are deemed to be noted by each side without expressly taking them?

The COURT.—Any exception taken because of rulings made upon objections made by either party may be so considered. I do not care to have it understood that all exceptions are implied, because it may not be called to the Court's attention. As to objections made they may be deemed to be taken to adverse rulings.

A. When I approached him I asked him if he had a certificate of residence or other paper, and he said no.

Q. What did he say as to his vocation?

A. He said he was a laundryman and was in Los Angeles looking for work.

Q. Did he at that time or later produce any certificate? A. Not to the Immigration Service.

Mr. SCHOONOVER.—That is all.

Cross-examination.

(By Mr. McNAB.)

Q. Did you ask him where he was born?

A. I did not at the River Station; I did in the office.

Q. You didn't ask him at the River Station, you say?

A. I did not at the River Station, but did in the office.

(Testimony of W. A. Brazie.)

Q. Where did he say he was born?

A. San Francisco, California. **[25]**

Q. He claimed to be a native-born citizen of the United States, did he? A. He did.

Mr. McNAB.—That is all.

Mr. SCHOONOVER.—That is all. The Government rests, your Honor, upon the theory that we have in this case as in cases of this character, under the practice heretofore followed and understood to be correct, made out a *prima facie* case as to the defendant, that he was a laborer and found in the country without a certificate.

Mr. McNAB.—If your Honor please, we want to be, in this matter, absolutely fair with the Court and the other side, and I will state my position briefly. It is laid down in the Chinese Exclusion Act in section 3 that where a person is charged with being unlawfully in the country the burden of proof is upon the alien to establish the fact that he is lawfully within the country. It has, however, very recently been decided, not only by the Circuit Court of Appeals, 7th Circuit, but also by the Court of Appeals of the District of Columbia, by the full Court, in a unanimous opinion, that that has absolutely no application in a case where a person claims to be a native-born citizen of the United States, notwithstanding he is of Chinese descent, and in that case the Government holds the burden of proof and must establish affirmatively that he is not a person born within the United States and is not entitled to remain within the United States. However, in this

matter, if your Honor please, we are perfectly willing that that question shall be determined by the Court when the case has been concluded, and if there be no objection I can present briefly to the Court the authorities upon that question in order that your Honor might have them in mind while listening to the [26] evidence. It may be that your Honor may be in a frame of mind after listening to the evidence which is to be produced throughout the day that a decision can be rendered upon this question without the necessity of getting other witnesses. It may be that your Honor will wish to have all of the witnesses heard. And with that in view, if there be no objection, I can briefly present the authorities on the question.

The COURT.—There is no particular reason for doing it now. I do not see how a person, by the character of claim he makes, could change a rule of law or evidence. If he says he is a citizen, the burden of proof changes, whether he is or not? Now, that does not appeal to me in logic.

Mr. McNAB.—I am simply telling your Honor what the decisions say.

The COURT.—I know, but I am telling you what I think about it.

Mr. DOCKWEILER.—We would like, if the Court will permit us, at this time to read the decisions in the various cases.

The COURT.—Very well, proceed.

Mr. McNAB.—Does your Honor wish to hear them at this time?

The COURT.—Yes, I will be very glad to.

Mr. McNAB.—I will read the decision in the case of Chin Wah vs. U. S., No. 2699, in the Court of Appeals for the District of Columbia, decided January 4, 1915, (Reading—"This is an appeal from the judgment of the Supreme Court of the District of Columbia . . . when he was about thirteen years old.") Now, there follows a great amount of matter in this decision which has relation to the admissibility of certain records and which does not bear upon this question—and I can see, of course, that the decision comes within the scope of your Honor's suggestion a few minutes ago that there was affirmative [27] proof that he has been born in this country and that it was not raised upon the question as to his mere claim. (Reading further—"It is true that section 3 of the act of 1892 provided . . . of his case.") Signed by Shepard, Chief Justice, and concurred in by the remaining members of the court.

The COURT.—The net result of it would be to put a premium upon perjury by making it to the benefit of the person who claims citizenship, whether he is a citizen or not, and changing the rule of evidence.

Mr. SCHOONOVER.—It is not perjury, your Honor. It is a flagrant disregard of an oath, which the Supreme Court of the United States recognizes as being a Chinese characteristic.

The COURT.—Well, call it by its right name—perjury. Let me see that Chinese Exclusion Act.

Mr. McNAB.—The decision to which I wish to call your attention, if your Honor please, goes more elab-

orately into the reason for the decision and draws a very marked distinction between an alien for whose regulation or expulsion or deportation the Chinese Exclusion Act was passed and a person who claims the protection of the Constitution by virtue of a claimed nativity. It is written by Grosscup, Circuit Judge, and is for the Eastern Division of Illinois. It is 147 Fed. 697, Moi Suey vs. U. S. (Reading—"Moi Suey, the appellant, was arrested February 7, 1904, . . . as well as the name of his uncle." . . . "But the Government claims that under section 3 . . . having been filed in a late case.")

In that case they did determine, however, that if there was an unfair hearing in any respect it might be granted.

(Reading—"These cases proceed upon . . . with instructions to discharge the appellant.") [28]

The COURT.—Let me see that case. Why do they order the judgment reversed? Because the evidence was not sufficient, apparently. The very question in the case is whether or not he is a citizen. When he is a citizen, of course, he is entitled to the protection of the Constitution and those remarks are applicable. But the simple fact that he says he is a citizen does not entitle him to the protection of the Constitution when charged with a civil crime; surely not. They say "There is no testimony, for instance, throwing doubt upon the fact . . . as the proven records show." Now, that is the decision in that case.

Mr. McNAB.—The discussion now proceeding was

(Testimony of Yee Chung.)

based upon the suggestion of the District Attorney that he would like to have us discuss the law. We did not suggest that we discuss this question; we said we were ready to proceed.

The COURT.—Well, I am not inclined to hold that upon a mere claim of citizenship the burden established by this act thereby changes.

Mr. McNAB.—The United States Bureau of Immigration in a circular letter by the Department, which the other side could produce, announces that doctrine.

The COURT.—Then it is sufficient for me to say that I am not bound by any such circular letter.

Mr. McNAB.—I think your Honor is quite correct.

The COURT.—Proceed, gentlemen, and we will now hear the evidence.

(Chan Kiu Sing sworn as interpreter.) [29]

Testimony of Yee Chung, in His Own Behalf.

YEE CHUNG, defendant herein, having been duly sworn, testified, through the Interpreter, as follows:

Direct Examination.

(By Mr. McNAB.)

Q. What is your name? A. Yee Chung.

Q. How do you spell it?

The INTERPRETER.—Yee Chong or Chung.

Q. How do you spell it?

The INTERPRETER.—Y-e-e C-h- either u-n-g or o-n-g.

Mr. McNAB.—I suppose that will be no dispute between the Government and ourselves, as has been

(Testimony of Yee Chung.)

frequently noted in the authorities, that the only way of spelling Chinese names in English is by sound,—phonetically.

The COURT.—Yes, and you will even have some difficulty in spelling that that way.

Mr. SCHOONOVER.—This defendant's name is Yee Chong.

Mr. McNAB.—I don't think so. It has been spelled half a dozen different ways, I think.

Mr. SCHOONOVER.—How does the witness spell his name?

The COURT.—Ask him how he spells his name, Mr. Interpreter.

The INTERPRETER.—(After interrogating witness.) Well, sometimes he pronounces it as "ung" and sometimes "ong."

Mr. SCHOONOVER.—Ask him whether he told—

The COURT.—Well, wait now. This is not your witness.

Q. (By Mr. McNAB.) When were you born?

A. I was born in K. S. 6; on the first month, eighth day.

Mr. McNAB.—Can we agree on what date that is?

Mr. SCHOONOVER.—Just state what it is, Mr. Brazie.

Mr. BRAZIE.—February 17, 1880.

Q. (By Mr. McNAB.) Where were you born?

A. In San Francisco. [30]

Q. At what place in San Francisco?

A. At a building at 728 Sacramento Street.

Q. Who was your father? A. Yee Kim Sing.

(Testimony of Yee Chung.)

Q. How do you spell it?

The INTERPRETER.—Y-e-e K-i-m S-i-n-g.

Mr. McNAB.—I presume it will be admitted by counsel on the other side that that, like other names, varies in spelling from time to time.

Mr. SCHOONOVER.—I presume so.

Q. (By Mr. McNAB.) What was your mother's name? A. Wong Shee.

Q. Are your father and mother still alive?

A. Yes, sir.

Q. Where do they live? A. In China.

Q. When did they go to China?

A. They went to China in K. S. 7.

The INTERPRETER.—That would be in 1881.

Q. (By Mr. McNAB.) What was your father's business in San Francisco?

A. General merchandise store with a firm named Quong Woh Chung.

Q. How do you spell it?

The INTERPRETER.—Q-u-o-n-g W-o-h C-h-o-n-g or ung.

Q. At what place in San Francisco did the party named Quong Woh Chung do business?

A. In Sacramento Street.

Q. At what number? A. 728.

Q. What kind of business did the firm of Quong Woh Chung engage in? [31]

A. Chinese general merchandise.

Q. What position did you father occupy in that store, if you know? A. He was a bookkeeper.

Q. After your father went to China did he return

(Testimony of Yee Chung.)

to the United States?

A. Yes; he returned to the United States the next year.

Q. When your father and mother went to China in 1881 as you have testified, did they take you with them?

A. Yes, sir; three of us—my parents and myself.

Q. How long did your father remain in China after going back? A. Only a few months.

Q. Did your mother ever return to the United States? A. No, never.

Q. How long did you remain in China after going back at that time?

A. I went to China when I was only two years old and returned at the age of eighteen.

Q. How long after you were born did you leave for China? What was the time of the year, if you remember?

A. I was born on the 8th day of the first month, K. S. 6, 1880, and we went to China—it was in the latter part of the following year; I think it was in either the seventh or eighth month.

Q. How long did you remain in China after you went back with your mother and father?

A. Nearly sixteen years; because I went while I was only two years old and came back at the age of eighteen.

Q. In what year did you return to the United States?

A. K. S. 23, in the latter part of the year, 1897.

(Testimony of Yee Chung.)

Q. When you came back from China to the United States do you remember what city or port you landed at in the United States?

A. I came back by way of Vancouver.

Q. Vancouver, British Columbia? A. Yes, sir.

Q. Then where did you go from there?

A. From there we went to Montreal.

Q. Montreal, Canada?

A. And then by way of Burlington.

Q. What State? A. Vermont.

Q. Burlington, Vermont. What happened to you at Burlington, Vermont?

A. I was detained there and then tried by a court.

Q. Do you remember what court it was?

A. No.

Q. Had you ever seen such a court before?

A. No. That is the first court I was in.

Q. Do you remember the name of the Judge or Commissioner that tried your case?

A. No, I can't recall. He was an old man with a long beard.

Q. At that time what did you tell him your name was? A. Yes, sir. I told him I was Yee Chung.

Q. Did he ask you where you were born?

A. Yes, sir.

Q. What did you tell him?

A. I told him I was born in San Francisco.

Q. Did he ask you the year and who your parents were? A. Yes, sir. [33]

Q. After you were tried before this Judge or Commissioner at Burlington, Vermont, did you get any papers?

(Testimony of Yee Chung.)

A. Yes, sir; there was a paper; not very large.

Q. Where is that paper now?

A. Why, that paper was lost through a shipwreck while I went to China. I boarded a steamer at Seattle, Washington, in the year K. S. 33—the steamship "Dakota." I left there on the 6th day of January, K. S. 23, on the S. S. "Dakota."

Mr. SCHOONOVER.—What date would that be?

Mr. BRAZIE.—The 6th, by—what count is he giving, Chinese or English count?

The INTERPRETER.—He said K. S. 33, first month, sixth day, when he sailed from Seattle on the S. S. "Dakota."

Mr. BRAZIE.—That would be the 18th day of February, 1907.

The COURT.—What is this date?

Mr. McNAB.—That is when he subsequently went to China from Seattle; and my purpose now is to prove the destruction of the copy of this record. I will come back to that trip, however.

Q. You say that paper that *that* you got from the Commissioner was lost in shipwreck. What did the Commissioner do with you at Burlington, Vermont?

A. Well, I was declared as a native and discharged.

Q. Did you ever at a later time get another copy of that paper from the Commissioner in Burlington, Vermont? A. Yes, sir, after the trial.

Q. Do you remember about what time it was that you got that paper? A. A few days after the trial.

Q. Now, after you were discharged, as you say, by

(Testimony of Yee Chung.)

the Commissioner at Burlington, Vermont, where did you go?

A. From there I went to Boston. [34]

Q. Why did you go to Boston?

A. Because my father was there engaged in business.

Q. Now, your father, when he left San Francisco to go to China, you say was engaged at work with the Quong Woh Chung Company in San Francisco. When did he go to Boston, if you know?

A. Well, he sold his business there in San Francisco in the year K. S. 22 and then he went to Boston.

Mr. BRAZIE.—1896 is K. S. 22.

Q. (Mr. McNAB.) What business did he go into in Boston?

A. The same kind, Chinese general merchandise.

Mr. McNAB.—Go back to that date again, Mr. Interpreter, and see if we have that right; that is, the time that he understands his father sold out in San Francisco. Well, that is right, K. S. 22.

Q. What business did your father go into in Boston? A. Chinese general merchandise.

Q. Do you know what firm?

A. The Sam Sing store.

The COURT.—I didn't understand the witness to say when his father returned from China after his departure for China in 1881.

Mr. McNAB.—He only remained about a year there, your Honor.

Q. You say you went to Boston. Did you go to the place where your father was?

(Testimony of Yee Chung.)

A. Yes; my father went with me from Burlington to Boston.

Q. Now, at Burlington where you had this trial, was your father there as a witness? A. Yes, sir.

Q. Did you know whether or not he was sworn as a witness there before the Commissioner? [35]

A. Yes, sir.

Q. Did you hear him testify?

A. I didn't hear it, because he was examined first.

Q. After you got to Boston with your father, what did you do?

A. Well, I remained with him only a few days, a short time, and then he sent me over to Carnegie, Pennsylvania.

Q. Who did he send you with to Carnegie?

A. Well, he wrote to his friend over there first, and then he bought me a ticket and sent me over there.

Q. How long did you stay at Carnegie, Pennsylvania? A. I stayed there about ten years.

Q. At the end of the ten years what did you do?

A. Then went to China.

Q. During the ten years that you were in Carnegie, Pennsylvania, what were you engaged in doing most of the time? A. Laundryman.

Q. Who were you in business with?

A. Yee Lee.

Q. Who was the owner of the laundry?

A. Yee Lee was the owner.

Q. You stayed with him ten years?

A. Yes, sir.

Q. At the end of ten years you say you went to

(Testimony of Yee Chung.)

China. Where did you leave the United States to go to China? A. By the port of Seattle.

Q. Before you went on board the steamer at the port of Seattle was any investigation held by the United States Immigration officials there as to who you were and whether you had a right to go?

A. There was only a paper signed by an official; there was no investigation made. [36]

Mr. McNAB.—I inadvertently used the words "right to go." The United States always concedes the right to go. I meant the right to remain.

The COURT.—No doubt of it.

Q. (By Mr. McNAB.) You say you received a paper there?

A. There was on official came down to the boat or steamer and got my paper and signed it.

Q. I show you this paper and ask you whether or not you had that paper and presented it to the officials at Seattle before you went to China on the trip you are now talking about (handing paper to witness).

A. Yes. That is where that official signed his name here.

Q. In what year did you go to China by way of Seattle on this trip?

A. That ship sailed on the 6th day of the first month, K. S. 33.

The INTERPRETER.—Somewhere in February, 1907.

Q. Before you left Carnegie, Pennsylvania, did you get any copies of papers or papers to take with you?

(Testimony of Yee Chung.)

A. That is the paper that was sent to Vermont, to the Judge in Vermont, to sign.

Q. The paper which I hand you now?

A. Yes, sir.

Q. Or which I hold in my hand?

A. That is, before I left there for China I sent to the Judge in Vermont for that paper.

Mr. SCHOONOVER.—The same paper he presented himself. Isn't that the idea?

Mr. DOCKWEILER.—With the addition of the affidavits annexed thereto,—the affidavit of Rev. E. D. Donahue, Presbyterian minister, and also Mr. Jones, the banker at Carnegie. [37]

Mr. SCHOONOVER.—Did he leave all of that at Seattle with the inspector?

Mr. DOCKWEILER.—No; he presented the affidavit.

The COURT.—With a certified copy.

Mr. McNAB.—Well, presented the affidavit, which will include this.

Q. I ask you again to look at this paper which is marked by J. V. Stewart, the Chinese inspector, and ask you whether or not that is your photograph (handing paper).

A. That is my photograph.

Q. Did you present that photograph to the officials at Seattle before you went to China? A. Yes, sir.

Mr. McNAB.—We offer this in evidence; and in conjunction with it we offer at the same time the certified copy of all the proceedings in the investigation had at Seattle prior to his departure and evidencing

(Testimony of Yee Chung.)

his right to return, which includes a certified copy of all the proceedings before United States Commissioner Johnson at Burlington, Vermont. These are regularly certified by the United States Commissioner of Immigration at the office at Seattle, Washington.

Mr. SCHOONOVER.—Those were procured by the Government for this purpose. We have no objection to the introduction of them.

The COURT.—They will be admitted.

Mr. SCHOONOVER.—That is, the certified documents were, the other was not,

Mr. McNAB.—Yes.

Q. Are you the same Yee Chung that is named in these papers (showing papers to witness)?

A. Yes, sir.

Q. Are you the same Yee Chung that appeared before the United States Commissioner at Burlington, and named in these papers? [38]

A. Yes, sir.

Mr. McNAB.—Mr. Brazie, will you kindly give to me again the Chinese date for the hearing at Burlington?

Mr. BRAZIE.—Well, I don't know what that is.

Mr. McNAB.—Well, I will ask him.

Q. Do you remember about the date that you were before the United States Commissioner at Burlington, Vermont? A. No, I don't remember.

Q. How long was it after you landed at Vancouver, British Columbia,—about how long?

A. About six weeks from the time when I arrived at Vancouver.

(Testimony of Yee Chung.)

Q. You say you are the same Yee Chung that is mentioned in all these papers? A. Yes, sir.

Q. When you left the port of Seattle going to China in 1907 did you have any papers with you after you went on the boat?

A. One paper I left with the custom-house officers and then one I took along.

Mr. McNAB.—He says custom-house officers. Does he mean the immigration officers?

The INTERPRETER.—Yes.

Mr. McNAB.—Or do the custom-house officers perform the Immigration Service there?

Q. Well, ask him again, does he mean the customs officers or immigration officers as Seattle.

A. Well, I don't know. Simply I was called to leave one paper with the officials there, and then I took one along.

Mr. McNAB.—There seems to be a general tendency to refer to them as custom-house officials.

Q. What paper did you take with you when you went aboard the ship?

A. That is the paper (indicating paper in the hands of counsel). [39]

Q. What was the name of the boat?

A. The "Dakota."

Q. What became of the "Dakota" on that trip?

A. Well, the boat got as far as Japan and ran into a rock and was wrecked there.

Q. Did you lose any of your effects?

A. Yes, sir; I lost all.

Q. Did you have any trunk or baggage or anything

(Testimony of Yee Chung.)

which was lost?

A. Yes, baggage, a trunk, only that paper was in my pocket.

Q. Did you have any paper in your trunk or baggage?

A. Yes, sir, that paper was given to me by the Judge, that was in the trunk.

Q. Was that lost? A. Yes, with the trunk.

Q. How long did you remain in China after going on this trip from Seattle?

A. I left China to return to the United States on the 9th month, 1909.

Mr. McNAB.—I think, if your Honor please, before proceeding, in order to state the matter chronologically to your Honor I had better read this record in evidence.

The COURT.—It may be considered as read. There is no necessity for reading it, I think.

Mr. McNAB.—Very well, then I would like to state the substance of it, your Honor, or one or two portions of it.

Mr. DOCKWEILER.—Here is the original; that is a copy there.

Mr. SCHOONOVER.—They speak for themselves. The effect of them is a matter of argument.

Mr. McNAB.—Yes; I should like to have the first record introduced and marked on the back "Transcript of Record" to be marked as Defendant's Exhibit "A," being the same number of exhibit which was used before the Commissioner, if your Honor please,— [40]

(Testimony of Yee Chung.)

The COURT.—All right.

Mr. SCHOONOVER.—May we further identify that as being the paper the witness says he had in his pocket and which was not lost on the boat "Dakota"?

Mr. McNAB.—Well, let us see if that is true.

Q. Did you or did you not have that paper with you on the steamer "Dakota" when you went to China in 1907 (handing paper to witness)?

A. Yes, I had that paper with me.

Mr. McNAB.—Now, that will be Defendant's Exhibit "A." And the transcript of the record as it was prepared by the United States Commissioner of Immigration at the port of Seattle may be marked as Defendant's Exhibit "B," being the same number that was used before the Commissioner. I would just like to read these portions of it. The first portion consists of an affidavit of Yee Chung, signed by himself, and I just had occasion to note last night that his signature is the same as that attached to the affidavit which was filed yesterday, I think. That is, I mean the handwriting is the same.

Mr. SCHOONOVER.—How is the "Chung" spelled?

Mr. McNAB.—Y-e-e C-h-u-n-g. But the handwriting I would like to have your Honor compare. It states that Yee Chung is a resident of ——— County, State of Pennsylvania, and that he was born in the city and county of San Francisco, 728 Sacramento Street, K. S. 6, the first month and 8th day, and that his father was Yee Kim Sing and his mother Wong Shee. (Reading from record.)

(Testimony of Yee Chung.)

Mr. DOCKWEILER.—I might say at this time, may it please your Honor, that when we introduced the original record before the Comimssioner on the first trial the Government questioned the [41] authenticity of our exhibit "A," and by consent of both parties the clerk of this court transmitted that original document, exhibit "A," to the court in Vermont for verification, and the clerk of this court, following the transmission, received from the clerk of the court at Vermont certain letters, which letters, of course, confirmed the fact of authenticity, and also called attention to the fact that that original there, or the carbon copy of that original, is still on file in the record, and calls attention to the variations in the typewriting, in the type of the typewriting, apparent in the carbon copy as well as in the original. In other words, the clerk of the court there said that a copy of this original is to be found in the records of Judge Johnson. That transmission was made by stipulation of counsel, and the communications were official, and I would like to have those letters, Mr. Clerk.

The CLERK.—By the Commissioner, Mr. Williams?

Mr. DOCKWEILER.—Yes; I would like to have a copy of the letter Mr. Williams transmitted and the original replies of the clerk of the court. As I remember, there were two letters that the clerk of the court there wrote to Mr. Williams.

Mr. McNAB.—Until they are received, if your Honor please, I will proceed.

(Testimony of Yee Chung.)

The COURT.—Yes, proceed.

Q. (By Mr. McNAB.) On arriving in China after your departure from Seattle where did you go?

A. Well, I landed in Hong Kong, and then went back to the village where my home was.

Q. What was that village?

A. The Chow Duey village in Sun Ning district, China.

Q. How long did you remain in China before returning again to the United States? [42]

A. I went to China in K. S. 23; I left there to return to the United States in the ninth month Sun Him I; about October, 1909.

Q. While you were in China what did you do?

A. I haven't done anything.

Mr. McNAB.—There seems to be some dispute as to its importance but—

Q. Did you get married? A. I married before.

Q. When was it you got married?

A. I was married K. S. 22.

Mr. BRAZIE.—That would be in 1896.

Q. (By Mr. McNAB.) Then you got married before you came to the United States to Burlington, Vermont? A. Yes, sir.

Q. How long after you were married was it that you left for the United States on the trip that brought you to Burlington, Vermont?

A. About a year, practically, or a little over.

Q. Did you have any children by your wife at that time before you left for the United States?

A. Yes, sir, one boy.

(Testimony of Yee Chung.)

Q. Before you left for the United States the first time?

A. Well, one was born before I left, and then one after I came back to the United States.

Q. Do you remember when the first boy was born?

A. He was born in K. S. 23; the sixth month, 6th day.

Mr. BRAZIE.—That is July 5, 1897.

Q. (By Mr. McNAB.) And you say the second boy was born after you left for the United States?

A. Yes, sir.

Q. Do you know the date of his birth?

A. He was born the 25th day of the 5th month, the following year; K. S. 24. [43]

The INTERPRETER.—That would be 1898, about July, I guess. The 25th day of the first month, or the first part of July, I suppose.

Q. (By Mr. McNAB.) When you returned from China after leaving Seattle at what port did you re-enter the United States?

A. When I returned I landed at the port of San Francisco.

Q. Did you have any papers with you at the time you came into the port of San Francisco?

A. Yes, sir.

Q. What paper did you have with you?

A. The same kind of paper, only a copy of it, that is all.

Q. When did you land at the port of San Francisco?

A. I arrived at the port of San Francisco the first

(Testimony of Yee Chung.)

day of the tenth month by the steamship "Manchuria."

Mr. BRAZIE.—That would be November 12, 1909.

Q. (By Mr. McNAB.) When you refer to the same kind of paper, do you mean that you had a paper like this that I am now showing you, marked Defendant's Exhibit "A" (exhibiting paper to witness)? A. Yes, the same kind of paper.

Q. After your return to the United States at the port of San Francisco in 1909 where did you go?

A. Well, I went to Homestead.

Q. In what State? A. Pennsylvania.

Q. Did you afterwards bring in your two sons into the United States?

A. Yes. They came in in 1913.

Q. Which son did you bring in first?

A. No, I sent a paper for him to come.

Q. And which son came first? [44]

A. The oldest one.

Q. What is his name? A. Yee Woh?

Q. What is the name of the younger son?

A. Yee Lai.

Q. Through what port did they enter the United States, do you know? A. San Francisco.

Q. I show you this certificate of the Commissioner at San Francisco and ask you whether or not that is a picture of your son Yee Woh (handing picture).

A. Yes, the oldest son, Yee Woh.

Q. Is that the certificate (handing paper)?

A. Yes, sir.

Q. I show you the picture of this boy and ask you

(Testimony of Yee Chung.)

whether or not that is your younger son (handing picture). A. Yes, the second one, Yee Lai.

Q. Is that the certificate he received on land?

A. Yes, sir.

Q. These are the certificates and the photographs, are they? A. Yes, sir.

Mr. McNAB.—I offer these in evidence, if your Honor please, and ask that the one relating to Yee Woh be marked as Defendant's Exhibit "C" and that of Yee Lai as Defendant's Exhibit "D."

The COURT.—Very well; it is so ordered. They will be considered as read.

Mr. McNAB.—Yes, except I would like to call your Honor's attention to the fact that the certificate under seal of Samuel W. Brooks, officer in charge, set forth that he was admitted as the son of a native from the "Siberia" on June 2, and the certificate in regard to Yee Lai that he was admitted on the steamship "China" November 10, 1913, as the son of a native; and accompanying these is the statement showing Yee Woh son of a native, July 1, 1913. The alleged father claims to have returned to the United States from China via Vancouver, B. C., by steamship "Empress of China" in K. S. 11 (reads from exhibit). [45]

The COURT.—They will be considered as read.

Mr. McNAB.—I would like to ask your Honor to read the certificate of the examiner on the last page in which he speaks of the apparent candor, truthfulness, and so on, of this applicant and his investigation of all the facts. The clerk has very kindly pre-

(Testimony of Yee Chung.)

sented to me the correspondence, if your Honor please, to which Mr. Dockweiler alluded, and which I will present to your Honor in a moment. I intended to present at that same time the report of the immigration officials at San Francisco on the landing of this witness in 1909, which I would like to have marked as Defendant's Exhibit "E"; and I might state to your Honor that this report, which is quite exhaustive, goes into the efficiency of the record before Commissioner Johnson—

The COURT.—(Examining documents.) Just let me inquire. I see some memoranda here that do not appear to be signed by anybody. What relevancy do they have? "American citizenship of Yee Chung" Who is responsible for that?

Mr. McNAB.—It is one of the notes in among my papers; I don't know whether it is Mr. Dockweiler's or my own, but it is no part of the record, and I ask that it be torn from the record. It is simply making up a chronological statement of the various events.

The COURT.—You do not claim it has any relevancy or competency?

Mr. McNAB.—None at all, your Honor.

The COURT.—And this memorandum purporting to be signed by A. W. Long, what is the purpose of that?

Mr. McNAB.—I will ask the other side to present the original of that. That is Inspector Long's report on the landing of Yee Woh. It will not be disputed by the other side that that is a copy of it anyway, your Honor.

(Testimony of Yee Chung.)

The COURT.—All right. [46]

Mr. McNAB.—And it will likewise not be disputed by the other side that the copy now handed you is a copy of Inspector Mayo's report attached to the other papers.

Mr. SCHOONOVER.—I do not know what opportunity we have had to compare these. Have these copies been in our possession at any time?

Mr. NcNAB.—I don't know. If they are not correct, I will consent that they be stricken from the record and the originals substituted.

Mr. SCHOONOVER.—All right.

Mr. McNAB.—That is offered, among other things, for the purpose of showing the care with which the record of Commissioner Johnson was inspected, the fact that it was demonstrated there that the only ground on which he could have been discharged by Commissioner Johnson at that place would have been the ground of his nativity, otherwise he would have been investigated at Richmond, Vermont, and very rarely in those times did they attach any photograph.

Mr. DOCKWEILER.—Well, that is shown by the record of the court, anyway.

Mr. McNAB.—Yes.

The COURT.—As I remember it, there was a photograph attached to this record coming from Vermont.

Mr. McNAB.—No, not to the Vermont record, but he attached his photograph when he made his application to depart from Seattle.

Mr. SCHOONOVER.—No, there was a picture on

(Testimony of Yee Chung.)

the one he lost in his trunk. Is that what your Honor means?

The COURT.—No.

Mr. DOCKWEILER.—No, attached to Exhibit "A" is a photograph, but your Honor will recall that that photograph is attached to the affidavit and to the certificates of the Presbyterian minister and the banker, and the additional record in both of them, and [47] all the papers, that is, the affidavits and the certified copy of the records of the Vermont court, are put together and form one document. They are bound together. They are really separate documents.

Mr. SCHOONOVER.—That does not reach the question asked by you—whether or not the certificate asked of Johnson, the commissioner, that the defendant had lost in his trunk, did not bear a photograph.

Mr. DOCKWEILER.—Commissioner Johnson did not attach a photograph.

Mr. McNAB.—I think that is answered by this correspondence which was sent on by stipulation between counsel, if your Honor please, and I will briefly read a few of the—

The COURT.—Are you offering it in evidence?

Mr. McNAB.—Yes.

Mr. SCHOONOVER.—We have no objection.

The CLERK.—It will be Defendant's Exhibit "F."

Mr. McNAB.—A number of questions were asked of the Commissioner—asking them to investigate

(Testimony of Yee Chung.)

the authenticity of the record—and you will notice in the last letter that he states he had compared it with the carbon copy.

Q. (By Mr. McNAB.) After your sons arrived in San Francisco, where did they go?

A. To Pittsburg.

Q. Where are they now?

A. They were there before.

Q. At Pittsburg? A. Yes.

Q. What were they doing in Pittsburg?

A. In school.

Q. What kind of a school?

A. An English school.

Q. A school to learn the English language? [48]

A. Yes.

Q. Where does your father now live?

A. In China.

Q. When did he leave Boston?

A. He sold his business in K. S. 33, in the early part of the year, and then came over to Pittsburg in the 5th month. Oh. He came over to Pittsburg, and he left Pittsburg about the fifth month, and then went to China by the port of Vancouver.

Q. What State?

A. I don't know the name of the State, but that is the place.

Q. Did you go with your father and see him go or did he simply leave you at Pittsburg?

A. Oh, I went to China first.

Mr. McNAB.—I don't think he understood me. I want to ask him this question.

(Testimony of Yee Chung.)

Q. Where did he bid his father good-bye?

A. Why, in Boston.

Q. You said your father came on to Pittsburg after selling out his store. Now, did he leave from Pittsburg to go to China, or did he leave from Boston?

A. He left Pittsburg. From there he went to China.

Q. Were you down at Boston about the time he closed up his store or not? A. No.

Q. Perhaps you misunderstood me. Where did you last see him before he left for China?

A. In Boston was the last time I saw him here in the United States. Of course, I saw him in China afterwards.

Q. Yes, but explain how it was that he happened to see him in Boston, and did he see him in Pittsburg, too? A. I didn't see him in Pittsburg.

Q. Oh, I understand. Then after you bade him good-bye at **[49]** Boston, did you see him again until you saw him in China?

A. I saw him last in Boston, and then I saw him again in Chnia.

Q. Well, after he left Boston, you didn't see him again until you saw him in China?

The INTERPRETER.—Boston, is it?

Mr. McNAB.—Well, whenever he said he saw him last. A. Yes, sir.

Q. Do you know anything about how he left the country, except what he told you?

A. Except what he told me, because he said he

(Testimony of Yee Chung.)

sold his business in Boston and went over to Pittsburg to collect some bills, some debts owing him, and from there on the fifth month, he went to the Portal, and then from there to Vancouver, and went to China.

Q. Did you go with him to Portal?

A. No, I was in China already.

Q. Then all you know about it—what he told you?

A. Ying Ark told me, because my father told him and he told me.

Q. Where were you living at the time your father lived in China? A. I was in China.

Q. Then when you say you bade your father good-bye in Boston, you mean before you left for China, do you?

A. No. When I first came back from China I bade him good-bye there, and then I went to Pennsylvania from there.

Mr. McNAB.—Oh, yes. I understand. That is all. Cross-examine.

Cross-examination.

(By Mr. SCHOONOVER.)

Q. Ask the witness when he first saw his father.

A. Well, I was born in San Francisco and went with him to China.

Q. Ask him when he first saw his father.

The COURT.—Direct your questions to the witness in English.

Q. (By Mr. SCHOONOVER.) Well, when he first remembers seeing his father—

(Testimony of Yee Chung.)

The COURT.—No, "When did you—." [50]

Q. (By Mr. SCHOONOVER.) All right. When did you first see your father and know him to be your father? A. Well, when I was a child.

Q. How old were you?

A. When I know something.

Q. Where was your father then?

A. He was in China.

Q. Was your mother there at that time?

A. Yes, sir.

Q. Any other children?

The INTERPRETER.—By "children" do you mean his parents?

Mr. SCHOONOVER.—Yes, other than he.

A. No, sir.

Q. (By Mr. SCHOONOVER.) Do you know how long your father and mother had been married, or did you ever hear them say how long they had been married, before you were born?

A. No, they didn't tell me.

Q. And you remained there with them in China, you say, until you were eighteen years old. You stayed there about sixteen years? A. Yes, sir.

Q. Did your father stay there during that time?

A. He was in the United States.

Q. How long did he stay when he took you over there, you and your mother?

A. Only a few months.

Q. Did he come back again during the sixteen years while you were there, to China?

(Testimony of Yee Chung.)

The INTERPRETER.—Come back to the United States?

Mr. SCHOONOVER.—No, to China from the United States. A. No.

Q. When did you next see your father after he left China? **[51]**

A. I next saw him in Burlington.

Q. Did you see him in China before you came back?

Mr. McNAB.—There were two trips to China.

Mr. SCHOONOVER.—Well, during the 16-year period that he stayed there.

Mr. McNAB.—I wish you would make that clear.

Q. (By Mr. SCHOONOVER.) Well, after your father and mother and you, as you say, went over to China, did you see your father over there before he came back to this country?

A. Yes, I saw him every day before he left to come back.

Q. Before he left? A. Before he came back.

Q. And how old were you when he started back from China? A. Three years old.

Q. Is that Chinese or American count?

A. You see I was born in K. S. 6, the first month, and then the eighth year would make three years.

Q. Then you were born in K. S. what?

A. K. S. 6. The eighth day of the first month.

Q. And when did your father start from China to come back to the United States?

A. I heard that it was the 6th or 7th month when he left there.

(Testimony of Yee Chung.)

Q. What K. S.? A. K. S. 8.

Mr. McNAB.—That means that he returned from China in 1882. Is that right?

The INTERPRETER.—He said he left there about the 5th month.

Mr. BRAZIE.—June or July, 1882.

Mr. McNAB.—When you speak of "he" I want to know whether it was this witness or his father. Who was it the witness said came back from China?

The INTERPRETER.—Well, I take the witness' place. He meant the father. **[52]**

Mr. McNAB.—When does the witness say his father, now, left China to come back?

Q. (By Mr. SCHOONOVER.) Ask him when his father left China to come back, when he was a baby?

A. He left there either the fifth or sixth month of K. S. 8.

Mr. BRAZIE.—That would be June, July or August, 1882.

Q. (By Mr. SCHOONOVER. And when, according to our computation, was he born?

Mr. BRAZIE.—He was born February 17, 1880, according to the calendar.

Q. (By Mr. SCHOONOVER.) You say you next saw your father in San Francisco, or Burlington, Vermont? A. Yes, sir.

Q. And when was that?

A. The latter part of the year K. S. 23.

Mr. BRAZIE.—1897.

Q. (By Mr. SCHOONOVER.) Can he give the month that he saw his father there in Burlington,

(Testimony of Yee Chung.)

Vermont? A. The twelfth month, I think.

Mr. BRAZIE.—That would be December, 1897, or January, 1898.

Mr. McNAB.—The certificate says he was there January, 1898. He was arrested sometime before that.

Mr. DOCKWEILER.—At the end of December.

Mr. SCHOONOVER.—Well, we insist there is no evidence that this defendant ever was arrested there.

Mr. McNAB.—There is only his testimony that he was, and the record shows he was.

Q. (By Mr. SCHOONOVER.) What time did you land on the "Empress of Japan" at Vancouver?

A. The eleventh month.

Mr. BRAZIE.—The eleventh month of what?

A. K. S. 43. **[53]**

Mr. SCHOONOVER.—That is in 1897?

The INTERPRETER.—Yes.

Mr. BRAZIE.—From November 24—

The INTERPRETER.—Or December, I mean.

Mr. BRAZIE.—That is from November 24 to December 23, 1897.

Mr. SCHOONOVER.—That is 1897?

Mr. BRAZIE.—1897.

Q. (By Mr. SCHOONOVER.)- Ask him what boat he landed at Vancouver on on that date.

A. One of the "Empresses," but I don't know the other part of the name.

Q. You did know when you were examined before

(Testimony of Yee Chung.)

the Commissioner here, didn't you, and testify what boat it was?

A. One of the "Empresses," that is all.

Q. Didn't you testify here before the Commissioner that it was the "Empress of Japan"?

Interpreter LEVY.—The Commissioner here?

Mr. SCHOONOVER.—Yes, the Commissioner here.

A. There was several "Empresses." I didn't say particularly any one.

Q. Ask him if he remembers here when he testified with Mr. Gintgee as his interpreter before the Commissioner.

A. I don't remember that, because all I remember is that it was one of the "Empresses." There were several of them.

Q You don't remember now, then, that you testified through Mr. Gintgee, the interpreter, that you landed at that time in Vancouver on the boat "Empress of Japan"?

A. As I remember, I told that it was one of the "Empresses."

Q. That is all you do remember, that you said it was one of the "Empresses"?

A. Yes, one of the "Empresses."

Q. It was one of the "Empresses." Ask him if he means [54] "Empress" or "Emperor."

A. The Chinese call it the "Empress."

Q I will ask you if you were not asked this question on examination here before the Commissioner and if you did not testify through the interpreter,

(Testimony of Yee Chung.)

Mr. Gintgee, as follows, at page 71 of the transcript of the hearing before the Commissioner, being volume 1, including the proceedings of August 6, 1914,—if you were not asked by Mr. Dockweiler, your counsel, this question: "Q. On what boat did you come back, if you remember?" and if you did not answer "'Emperor of Japan.'" "Emperor," it is written here, "of Japan." "Way of Vancouver."

A. I always remember as the "Empress." I might have said the "Empress of Japan."

Q. Well, if you did say the "Empress of Japan," then why did you say the "Empress of Japan"?

A. Because all those steamers, the Chinese call them "Empress."

Q. It appears here that you were asked the simple question, "On what boat did you come, if you remember?" the first time any question was asked you as to the boat, and that you answered, "Emperor of Japan, way of Vancouver."

A. Well, possibly it was the "Empress of Japan."

Q. If you made that answer at that time you believed at that time, did you not, that it was the "Empress of Japan" that you landed on at Vancouver?

A. Yes.

Q. And after answering the question in that way I will ask you if Mr. Dockweiler did not repeat the inquiry in this form: "Emperor of Japan?" and if you did not answer, "By way of Vancouver."

A. Yes.

Q. And then he asked you the question, "Did you

(Testimony of Yee Chung.)

land at Vancouver?" and you answered, "Yes, landed in Vancouver." A. Yes. **[55]**

Q. And then he asked you, "Then from Vancouver where did you go?" and you answered, "After landing on the 'Emperor of Japan' in Vancouver, then take the rail there to Vermont where my father intended to meet him there."

Mr. DOCKWEILER.—"Intended me to meet him there."

Mr. SCHOONOVER.—"Where my father intended me to meet him there"—Yes.

A. Not that way?

Q. You didn't answer that way?

A. It might be a mistake somewhere there.

Q. Is this your signature (showing document)?

A. Yes.

Mr. SCHOONOVER.—This document is dated S. F., Cal., November 17, 1909, No. 47, Yee Chung, Inspector Long. The "Manchuria," November 12, 1909. Statement of applicant.

Mr. McNAB.—Is it proposed to impeach this man—

Mr. SCHOONOVER.—I propose to ask him if he did not testify on this occasion—

Mr. McNAB.—Is it proposed to impeach this witness by his Chinese signature to an American writing without showing whether he ever read this typewritten instrument?

Mr. SCHOONOVER—I think that would be a matter of cross-examination.

The COURT.—I do not know what is proposed

(Testimony of Yee Chung.)

yet; we haven't gone far enough.

Q. (By Mr. SCHOONOVER.) I will ask you: When did you sign this, and what was your reason for signing that paper (same paper).

The INTERPRETER.—He asks how old the paper is.

Mr. SCHOONOVER.—Well, I will put the question in another form.

Q. Did you, when you landed on the "Manchuria,"—

Mr. DOCKWEILER.—Wait. The witness asks for information. **[56]**

Mr. SCHOONOVER.—It is dated November 17, 1909, at San Francisco, California.

A. Well, if the paper is of that age, then I signed that, yes.

Q. And it is the statement that you made when you landed on the "Manchuria" on that date, is it not, to the inspector?

Mr. McNAB—I object to that as calling for a conclusion of the witness. How can this witness know what is in a Government document that he cannot read?

The COURT.—It does not appear that he cannot read it, but it appears that he did not read it.

Mr. SCHOONOVER.—The witness answers the question and says yes, it is that statement.

The COURT.—Well, it is overruled anyhow. Go on.

Q. (By Mr. SCHOONOVER.) Now, I call your attention to this statement in the statement—

(Testimony of Yee Chung.)

Mr. DOCKWEILER.—Well, read the whole statement.

Mr. SCHOONOVER.—No, I don't know that that is necessary.

Mr. McNAB.—Well, one thing is necessary, and that is that I know the page of that so that if you are going to ask my witness concerning it I am going to have it. Will you kindly give me the page?

Mr SCHOONOVER.—This is not paged.

Mr. McNAB.—Well, so that I can have some way of identifying it.

The COURT.—It is identified by the date and signature. Now, proceed and ask him what you want to know.

Mr. McNAB.—If it contains some withering blast material I would like to have it all and be done with it.

Mr. DOCKWEILER.—Well, I don't think it does.

The COURT.—Let us see what it does contain.

Mr. SCHOONOVER.—Well, I read *read* this to him: "What is your name? A. Yes. Q. Yee Chung, no other name. Q. How many trips have you made to China? A. Two. Q. What is your]57[business? A. Laundryman at Carnegie, Pennsylvania; called Yee Lee Laundry, at 111 Main Street. Q. When did you depart the first time? A. When I was two years old, with my father, and returned K. S. 23, the 11th month, on the "Empress of Japan," arriving at Vancouver, and went to Burlington, Vermont." That is all I care for.

(Testimony of Yee Chung.)

Mr. McNAB.—Now, I would like the whole statement.

Mr. DOCKWEILER.—Is the difference between the words "Emperor of Japan" and "Empress"?

The COURT.—Well, I suppose you want to know if he made that statement.

Mr. SCHOONOVER.—Yes.

The COURT.—Ask him.

Mr. SCHOONOVER.—Well, he says he signed the paper on which the statement appears.

The COURT.—He may have signed that paper and not know anything about it.

Q. (By Mr. SCHOONOVER.) Well, I will ask you if you made the statement that I have read there, then: "When I was two years old with my father I returned K. S. 23, the 11th month, on the "Empress of Japan," arriving at Vancouver, and went to Burlington, Vermont."

Mr. DOCKWEILER.—Read the whole answer.

Mr. SCHOONOVER.—"The next trip I departed K. S. 23, 16, on the steamship 'Dakota.' That steamship sank near Japan and I lost all my papers and possessions"

Q. Now, I want to ask you this question: Did he state in this statement that bears his signature at that time as follows: "When I was two years old, with my father I returned K. S. 23, the 11th month, on the 'Empress of Japan,' arriving at Vancouver, and went to Burlington, Vermont." A. Yes.

Mr. McNAB.—Maybe these dates prove confusing to the Court. Is **[58]** the question you are

(Testimony of Yee Chung.)

now directing to the witness intended to impeach him as to any date?

Mr. SCHOONOVER.—As to whether he landed on a boat "Empress of Japan" or not?

Mr. McNAB.—You are trying to determine the sex of the boat—whether "Emperor" or "Empress"?

Mr. SCHOONOVER.—Not at all.

Mr. McNAB.—I am trying to find out, in good faith, what you are trying to impeach him on.

Mr. SCHOONOVER.—I am trying to show that he has testified on these other occasions, including his testimony before the Commissioner in this case, that he arrived in Vancouver on that date on the "Empress of Japan." He says that on every occasion, except that the record here before the Commissioner has it read "Emperor of Japan."

Mr. McNAB.—But at no time has he ever given any other state, I understand.

Mr. SCHOONOVER.—No, but he says now that he does not remember what boat he did land on, except that it was some "Empress."

Mr McNAB.—Well, I understand that.

Q. (By Mr. SCHOONOVER.) I will ask you if you made a sworn statement to the inspector at Homestead, Pennsylvania, June 16, 1913, in the matter of the investigation of your son Yee Woh.

The INTERPRETER.—Oh, you mean, did he give that evidence at that time?

Mr. SCHOONOVER.—Yes.

A. Yes, sir; I was interrogated.

(Testimony of Yee Chung.)

Q. Made a sworn statement? A. Yes, sir.

Q. Were you asked this question: "How many trips did you make to China?" and did you answer, "Two trips"? A. Yes. [59]

Mr. McNAB.—Just a moment. That is objectionable as to the manner of asking it. The statute requires that the question be read to him and ask him if he made that statement; not to state the question to him.

The COURT.—Well, I suppose that would be the way. But the defendant says yes.

Q. (By Mr. SCHOONOVER.) Were you then directed "Tell me of them"?

The INTERPRETER.—I didn't catch the question.

Mr. SCHOONOVER.—He was asked how many trips he made to China. He says, "Two trips." And then he was asked, "Tell me of them."

Mr. McNAB.—The state courts on a matter of this sort distinctly hold that, especially after many years have intervened, the witness should have an opportunity to refresh his recollection in regard to it. It would have to be done through the interpreter. Here he is asked whether or not a certain individual question was asked many years ago in a distant State. I confess to your Honor that I could not answer it or attempt to answer it.

Mr. SCHOONOVER.—I am doing that because you forced me to. When I offer the instrument you say he cannot read it. This statement is dated Pittsburg, Pennsylvania; then later, in parenthesis,

(Testimony of Yee Chung.)

"Homestead, Pennsylvania, June 16, 1913."

Mr. McNAB.—Our purpose in asking is that we may want to put the whole record in.

Mr. SCHOONOVER.—June 16, 1913. The parts I have read appear on page 4.

Mr. DOCKWEILER.—In what file is that?

Mr. SCHOONOVER.—San Francisco file No. 12,720; 817. We will now offer this in evidence, together with the entire record, or so much thereof as counsel may desire to refer to.

Mr. McNAB.—We object to the entire record being offered in evidence.

The COURT.—The objection is sustained. He says he has answered [60] the questions as you have indicated.

Mr. SCHOONOVER.—We will also, then, introduce in evidence file No. 12,017 above the line, and 2,844 below the line, initialed A. B., of the examination testified to by the witness at San Francisco on November 17, 1909.

Mr. McNAB.—I object to it as not proper cross-examination. Nothing has been asked the witness concerning it, and it contains hundreds of matters that we know nothing about.

Mr. SCHOONOVER.—I am not offering the whole record, in view of the Court's ruling on the other; I am only offering that portion of it.

The COURT.—He has admitted that he said the things you asked him about.

Mr. SCHOONOVER.—Yes.

The COURT.—Well, that has already been proved.

(Testimony of Yee Chung.)

Mr. SCHOONOVER.—Yes.

The COURT.—The objection is sustained. We will take a recess now until 2 o'clock.

(A recess was thereupon taken until 2 o'clock P. M.)

AFTERNOON SESSION.

2 o'clock P. M.

Mr. McNAB.—If your Honor please, counsel for the Government and myself have been discussing the question as to when we are likely to proceed with this case after to-day. I don't know what your Honor's practice in regard to Saturday is.

The COURT.—How much time will it require?

Mr. McNAB.—I don't know. It is growing longer than we thought it was. I thought we would get through by noon to-morrow, but the Government does not think so.

The COURT.—Well, we will keep on until to-morrow noon, anyhow. [61]

YEE CHUNG, defendant herein recalled—cross-examination resumed.

(By Mr. SCHOONOVER.)

Q. Where did the boat sail from in China that you landed on in Vancouver? A. From Hong Kong.

Q. When you left Hong Kong and left China, then, you left your mother there in China alone, did you? A. Yes, sir.

Q. And at the time you left Hong Kong and left your mother there alone, how long had your father been away from China? A. How long a time?

Q. How long? A. More than ten years.

(Testimony of Yee Chung.)

Q. Well, he left China and came back to the United States when you were about two and a half years old, you said. A. Yes.

Q. Then did he return to China after that before you took the boat at Hong Kong for Vancouver?

A. No, sir.

Q. Were there other Chinamen that came over on the boat from Hong Kong to Vancouver?

A. Yes, sir.

Q. Bound for Boston or Massachusetts?

A. Almost to any place.

Q. When you reached Vancouver and were inspected there, were other Chinamen inspected at the same time by the Canadian officers at Vancouver?

Mr. McNAB.—That assumes there was an inspection at those times. I doubt very much if there was.

The COURT.—Yes, there has been nothing to show that there was.

Mr. SCHOONOVER.—Well, I will ask him then, if he was examined [62] or inspected at Vancouver when he arrived there from Hong Kong.

Q. Were you inspected at Vancouver when you arrived there from Hong Kong? A. No.

Mr. McNAB.—What do you mean by "inspected?"

Q. (By Mr. SCHOONOVER.) You testified this morning that it was about six weeks from the time you landed at Vancouver until you were arrested in Vermont. Is that true?

A. Oh, I meant including the time when I left Hong Kong to the place where I was examined, six weeks.

(Testimony of Yee Chung.)

Q. You mean, then, that it was six weeks from the time you sailed from Hong Kong until you were arrested in Vermont? A. Yes.

Q. Do you remember how long it took you to come from Hong Kong to Vancouver?

A. I forget exactly how long, but a little over three weeks.

Q. Then it was about three weeks from the time you landed at Vancouver until you were arrested in Vermont, was it? A. Yes.

Q. Did you stop at Vancouver before proceeding to Vermont after you left the boat?

A. A few hours.

Q. You left Vancouver by train then, the same day that you landed on the boat? A. Yes.

Q. Did any Chinamen leave Vancouver with you on the train, that had been with you on the boat coming to Vancouver? A. Yes.

Q. How many? A. I don't know how many.

Q. Well, were there as many as ten?

A. I don't know.

Q. Did they travel in the same car with you out of Vancouver toward Vermont? A. Yes. [63]

Q. Were there white people other than Chinamen or any persons other than Chinamen passengers on that train? A. Yes.

Q. Any passengers other than Chinamen in the car that you rode in? A. Yes.

Q. Did these Chinamen who were with you when you left Vancouver on the train go as far as you did, all of them?

(Testimony of Yee Chung.)

A. Some got off on the way. Some got off at Montreal.

Q. They all rode with you, then, as far as Montreal, did they? A. Yes, sir.

Q. Did you get off at Montreal, too?

A. Yes, sir.

Q. How long did you stay in Montreal?

A. Three or four days.

Q. Then where did you go from Montreal?

A. Then took a train for Burlington, Vermont.

Q. Did you change cars between Montreal at Burlington, Vermont?

A. Yes, we changed cars on the way; half way.

Q. Ask him if he changed just once between Montreal and Burlington, Vermont.

A. As I remember, only once, because the white man called for people to get off and take the other car.

Q. There was a white man, then, in charge of the car you were in?

A. Well, there was a white man that called to get off the train.

Q. Was there a white man in charge of the car from Vancouver to Montreal?

Mr. McNAB.—I object to that, if your Honor please, as calling for a conclusion of the witness as to who might be in charge of the train. I do not presume this witness knows. It is susceptible, in cases of this kind of grave consequences if even the slightest error is made, and we think it ought to be made [64] more specific.

(Testimony of Yee Chung.)

Mr. SCHOONOVER.—I am asking him about having charge of the car and not of the train.

Q. Ask him if there was a man in this country who was in charge of himself and the other Chinamen to tell them where to get off—if he knows whether there was such a man or not—from Vancouver to Montreal, first.

A. Well, there were conductors in charge of it, yes.

Q. Well, when he says that the white man told them at the point between Montreal and the place where he left the train at Burlington, Vermont, he means the conductor of the train, does he, or do you?

A. Yes.

Q. How long did you stay at this point between Montreal and Burlington, where you changed cars?

A. Why, we stopped there two days.

Q. Then where did you go from that point where you changed cars?

A. There was a white man took us to another car and then go ahead.

Q. By "us" you mean yourself and the other Chinamen? A. No, only myself.

The INTERPRETER.—I might explain: The Chinese word has no number, so I sometimes—I thought it was maybe "us" because of the "kow" or "kay."

Mr. SCHOONOVER.—And when you said "us" the witness did not say "us"?

The INTERPRETER.—No, it seemed so. Well, he means there "we" or "us" or "myself"—"me." That is, in Chinese.

(Testimony of Yee Chung.)

Q. Then do I understand there were no Chinamen went with you from Montreal to the place where you changed the cars at Burlington? A. I was alone.

Q. Was Montreal the last place you saw any of the Chinamen that [65] were on the boat with you when you landed at Vancouver? A. Yes, sir.

Q. What kind of a ticket did you have from Hong Kong? Where was its destination—Hong Kong to what place in the United States, if it was the United States? A. To Montreal the ticket was.

Q. The ticket was from Hong Kong to Montreal?

A. Yes, sir.

Q. Did you have any ticket to Boston at all?

A. Yes.

Q. Where did you get the ticket to Boston?

A. My father sent for that paper for me. I bought a ticket at Hong Kong at a Chinese store; a steamship ticket, I mean.

Q. Where did that entitle you to ride to—Montreal or Boston?

A. The ticket brought me Hong Kong to Montreal.

Q. Did you get another ticket in Montreal?

A. That ticket was sent over to me by my father.

Q. Where from? A. From Boston.

Q. Where to? A. To Montreal.

Q. When did you get it in Montreal?

A. There was a Chinese store there, and when I got off there I got the ticket there.

Q. Was the ticket there when you got to Montreal? A. No.

Q. How long did you stay in Montreal?

(Testimony of Yee Chung.)

A. Five or six days.

Q. When did the ticket come?

A. Two or three days.

Q. How did your father know you were in Montreal?

Mr. McNAB.—I object to that as calling for a conclusion of the witness. [66]

The COURT.—The objection is overruled.

A. I wrote to my father in China before I left home.

Q. (By Mr. SCHOONOVER.) What did you write him?

A. I told him beforehand that I would come at a certain date.

Q. You told him you would reach Montreal at a certain date?

A. I told him that at a certain date I would leave China.

Q. Did you tell him what boat you would leave on?

A. I told him that at a certain date I would take one of two or three—take an "Empress."

Q. You didn't tell him which "Empress"?

A. No, because I didn't know which was which.

Q. How did you know it would be an "Empress" if you didn't know which "Empress" would leave on that particular date?

A. I told him in what month.

Q. You told him you would leave Hong Kong on a certain date on an "Empress" boat, did you?

A. Yes, sir.

Q. How did you know it would be an "Empress"

(Testimony of Yee Chung.)

boat that would leave on that date, if you didn't know which "Empress" boat it would be?

A. Well, they were speaking about it in Hong Kong among the storekeepers there.

Q. I call your attention again to the examination here in this same matter held before Commissioner Williams, which began on the 6th day of August last, and I will ask you if at that hearing, on page 87 of the transcript of the hearing, beginning on line 11, you were not asked this question: "What kind of a ticket did you have? Did you have a ticket from your home, from the beginning of your journey in China, direct through, or merely to Vancouver, on the steamship?" and if you did not answer "The ticket is direct from Hong Kong to Boston"?

A. Yes.

Q. Who told you what train to take when you changed cars at [67] Montreal?

A. Why, the Chinese storekeeper in Montreal.

Q. Is he connected with the railroad?

A. I didn't know that.

Q. Is he the same man that you say you got your ticket from that was sent up there by your father?

A. Yes, sir.

Q. Wasn't there a Chinese that told the Chinamen where to go from on the train from Vancouver to Montreal? Was there a Chinese in charge there?

A. Yes.

Q. Was he a Chinese agent of the railroad, or whose agent was he? A. I didn't know.

Mr. McNAB.—Where is this—on the train or at Vancouver?

(Testimony of Yee Chung.)

Mr. SCHOONOVER.—On the train from Vancouver to Montreal.

A. I didn't know who he represented.

Q. It was, then, a Chinese person that dictated to you and the other Chinese passengers what you should do, was it not?

Mr. McNAB.—Just a moment. I am in doubt as to whether the District Attorney is referring to on the train or at Montreal.

Mr. SCHOONOVER.—No, on the train from Montreal to—

Mr. McNAB.—Will you kindly include that?

Mr. SCHOONOVER.—Yes; I followed it with the other question and I intended to apply it to the same trip.

Mr. McNAB.—Well, I don't understand it myself and I would like to.

The COURT.—It is very evident what time was meant.

Mr. McNAB.—I defer to the ruling of the Court, although I myself would like to know because I understand there was an agent at Vancouver.

Mr. SCHOONOVER.—Well, he said I think there was one on the train. [68]

Mr. McNAB.—Well, that is the thing I would like to clear up.

The COURT.—Put it in the question, then.

Q. (By Mr. SCHOONOVER.) Well, where was it, anywhere from Vancouver to Burlington, Vermont, that a Chinese dictated to you and the other Chinese persons where you should go, when you

(Testimony of Yee Chung.)

should leave the train, and what train you should take when you did leave?

A. There was no Chinaman on the train on the way, but there was one that got on the train at Vancouver. There was Chinamen told us to get on.

Q. Chinamen or Chinaman?

A. Chinaman; one.

Q. There was a Chinaman told you to get on the train at Vancouver, but he didn't go to Montreal with you; is that so?

A. No, there was Chinaman go around with us on the train.

Q. Who told you to get off the train at Montreal?

A. Another Chinaman over there told us to get off.

Q. He met the train, then, at Montreal, did he?

A. Yes.

Q. Did he tell you and all the other Chinamen to get off there? A. Yes.

Q. Did you all go with him?

A. Yes; we went to his store.

Q. Did the other Chinamen get tickets at this same store to go to other places from Montreal?

A. That I don't know.

Q. Were these Chinamen landed at Montreal with you still there at this store when you left to go to Burlington? A. Yes.

Q. They didn't leave Montreal with you, but you went alone from Montreal down to the place where you changed cars for Burlington?

A. That was it.

Q. Where did you first see your father after you left Montreal? [69]

(Testimony of Yee Chung.)

A. In the courtroom in Burlington.

Q. And how long after you had been arrested?

A. Several days.

Q. Do you remember how many?

A. I don't remember how many days, but a number of days.

Q. Was there any other Chinaman arrested at the same time? A. At that time? No, I was alone.

Q. Was any other Chinaman questioned or stopped by an inspector at the time you were?

A. No; I was the only person.

Q. Where were you arrested?

A. I don't know the name of the place, but on the way between Montreal and Burlington.

Q. Was it in the United States, or Canada?

A. In the United States.

Q. Were you arrested on or off the train?

A. That was the place where the conductor told me to get off.

Q. To change cars? A. Yes.

Q. And were you arrested as soon as you got off the train there? A. Yes, sir.

Q. And where were you taken when you were arrested?

A. Why, he took me into a house. I was shut up there several days.

Q. At this place where you changed cars you were kept for several days? A. Yes, sir.

Q. Were you taken down to Burlington the same day you saw your father there from this point?

A. No.

(Testimony of Yee Chung.)

Q. How long were you in Burlington before you saw your father there?

A. I don't remember how many days, but several days.

Q. —you were in Burlington, before your father came up? A. Yes.

Q. Then you were several days at this point where you changed [70] cars and several days in Burlington before your father came? A. Yes.

Q. Where were you when you first saw your father at Burlington? A. In the courthouse.

Q. What time of the day did you first see your father in the courthouse?

A. I don't remember what time, but it was late in the forenoon.

Q. And where were you taken from to the courthouse?

A. Another place, in a house in Burlington.

Q. How far from the courthouse?

A. I can't recall how far it was.

Q. Were you taken directly from the train to this place near the courthouse when you reached Burlington? A. Yes, sir.

Q. Was this place nearer to the railroad station than the courthouse? A. I don't remember.

Q. Did you get any word from your father before you saw him in the courtroom there after you were arrested?

A. No, I got no words from him. I only saw him in the courthouse.

Q. Did you send any word to him after you were

(Testimony of Yee Chung.)

arrested and before you saw him in the courthouse?

A. No, sir.

Q. Did you send word to anybody after you were arrested and before you saw your father in the courthouse?

A. I wrote a note to my father saying that I was arrested by a white man here and kept in the house.

Q. Where did you write that from?

A. From Burlington.

Q. Did anybody come from Burlington to Boston with your father? A. I don't know. [71]

Q. Did you see anybody with him there when you met him in the courthouse?

A. Yes, there was a Chinese interpreter there.

Q. Did you know your father when you saw him there? A. Yes.

Q. You recognized him, did you? A. Yes.

Q. You knew that he was your father there in the courtroom without anybody telling you he was your father, did you? A. Somebody told me.

Q. Who told you that he was your father?

A. A Chinaman there.

Q. That is the interpreter? A. Yes.

Q. What kind of a looking man was this Johnson that tried you and gave you the certificate?

A. An old man with gray hair and a long white beard.

Q. Was he a large or small man?

A. Good big man; a good-sized man.

Q. How many people were in the courtroom when you had your hearing?

(Testimony of Yee Chung.)

A. There were a number of white men there.

Q. Was this man Johnson the biggest man in the room, the man that tried you?

A. No, there were white men there nearly or about the same size.

Q. Now I want to call your attention to your re-examination by inspector Mayer at San Francisco on December 10, 1909, after your arrival on the "Manchuria."

Mr. McNAB.—That was the examination immediately preceding Mr. Mayer's recommendation that he be landed? I think that is the only one Mr. Mayer examined him on.

Mr. SCHOONOVER.—Well, it will be understood, so far as I am [72] concerned, by court and counsel, that this Mr. Mayer did recommend his landing and passed on him.

Mr. McNAB.—There is no dispute about that.

Mr. SCHOONOVER.—It has been suggested so often that I think it is clear in the mind of everybody that the investigation was made.

Mr. McNAB.—I do not think there is any dispute about that. I think he examined him twice, didn't he? Which one is it?

Mr. SCHOONOVER.—This is the re-examination, as of this date, as I say,—of December 10, 1909.

Q. Do you remember being examined by inspector Mayer on December 10, 1909, after your arrival on the boat "Manchuria"? A. Yes.

Q. Ask him if he signed a written statement at that time of his examination.

(Testimony of Yee Chung.)

A. I was examined on board the ship and then was examined again in the detention house.

Q. Now, this refers to the re-examination in the detention house. A. Yes.

Q. Ask him if that examination at the detention house was written up and whether he signed the statement? A. Yes.

Mr. McNAB.—Just a moment. Well, all right.

Q. (By Mr. SCHOONOVER.) Ask him if the statement was read to him before he signed it?

A. No.

Q. It was not read to him? A. I can't recall.

Q. Whether it was read to him or not?

A. I don't remember now.

Q. Is that your signature (exhibiting paper to witness)? A. Yes. [73]

Q. I will ask you if you remember that you were asked in that examination: "Do you remember that judge who heard your case and discharged you distinctly (referring to Commissioner Johnson)?"

A. That was the question, yes.

Q. And did you answer "yes"? A. Yes.

Q. Do you remember that you were asked this question: "Was that man who acted as a judge in this case a large, small or medium-sized man?" and you answered "A big man"? A. Yes.

Q. And do you remember that you were then asked "About how much did he weigh? Answer: I don't know how many pounds he weighed, but he was considerably larger than the average man. He was the largest man in the room."

(Testimony of Yee Chung.)

A. No, because the white men generally are large size. I can't say that he was the largest one.

Q. Well, did you say at that time, at the time of this examination, as set down here above your signature, that he was the largest man in the room, at the time of your hearing before him?

A. I don't remember that I stated that.

Q. You say this Commissioner Johnson at Burlington, Vermont, gave you some kind of a certificate?

A. Yes.

Q. And when you took the boat "Dakota" from Seattle you had two of them, did you not, one in your pocket and one in your trunk? A. Yes, sir.

Q. The one that you had in your trunk had your picture on it, did it not? A. Yes.

Q. Who put the picture on it?

A. I didn't see it placed on. [74]

Q. Where was it placed on—when and where?

A. I don't know, because it was handed to me by my father.

Q. And when did your father hand it to you?

A. In Boston.

Q. Right after the hearing at Burlington?

A. No, after we reached Boston.

Q. From Burlington, after the hearing and you went from Burlington down to Boston.

The INTERPRETER.—Yes, after we got to Boston.

Q. Did you take the certificate with the picture on it from Burlington down to Boston—with you, when you went down together?

(Testimony of Yee Chung.)

A. I didn't know that, because I knew he gave it to me after we got to Boston?

Q. How long after?

A. At the time when I left Boston for Carnegie.

Q. And how long were you in Boston before you left for Carnegie? A. Four or five days.

Q. Your father ran a store there, did he, in Boston? A. Yes, sir.

Q. What firm was he connected with?

A. The Sam Sing store.

Q. What was the number and street?

A. Harrison street.

Q. What number? A. 40.

Q. Your father was then a member of what firm in Boston? A. Sam Sing.

Q. Was it known by any other name, if you know?

A. No.

Q. How long had your father been in business at that place before you went down there with him from Burlington, Vermont? [75]

A. Well, he went in there in K. S. 22; I went over there in K. S. 23. He had been there over a year, I guess.

Mr. McNAB.—We have no objection to that (returning document to counsel). Just a moment.

Q. (By Mr. SCHOONOVER.) How did your father spell his name? A. I don't know.

Mr. DOCKWEILER.—Do you want to use this (referring to document)?

Mr. SCHOONOVER.—Yes.

Mr. DOCKWEILER.—Where is the rest of the

(Testimony of Yee Chung.)

record that was sworn to September 20, 1895?

Q. (By Mr. SCHOONOVER.) Is this a photograph of your father as he appeared when you went down to Boston with him from Burlington, Vermont (exhibiting picture)?

A. No. (After re-examining picture.) Yes, that looks like my father.

Mr. SCHOONOVER.—I want to offer in evidence that partnership certificate there (handing paper to counsel).

Q. I will ask you if you remember testifying before the commissioner here, Mr. Williams, in this same matter that when this picture just submitted to you now was submitted to you it was not a picture of your father.

Mr. McNAB.—He does not say now that it is a picture of his father; he says it looks like his father. His first statement was that it was not.

A. It was not this picture shown to me.

Q. Do you mean that the picture shown to you in the hearing here before the commissioner was not the picture that was—that I just showed you here?

A. This looks more like my father, a resemblance to my father's picture, but it was not in the other one.

Q. You say this is a different picture, then, than was shown to you in the hearing before Mr. Williams, the commissioner?

A. It don't appear to me to be the same. [76]

Q. That picture didn't look like your father looked when you saw him in Boston after you went down

(Testimony of Yee Chung.)

from Burlington, Vermont,—the picture that was shown to you before the Commissioner? A. No.

Q. And this picture does look like your father looked at that time?

A. There was some resemblance of my father, but not exactly.

Q. This? A. Yes.

Q. Ask him how his father differed from that in appearance?

A. He was not so fleshy at that time.

Mr. SCHOONOVER.—This is a picture that is pasted on the back of the first page of an affidavit of Yee Kim Shing, dated the 20th of September, 1895, sworn to before Francis S. Fisk, United States Commissioner, being a part of enclosures in cover marked No. 467, U. S. vs. Yee Chung, Government Exhibit 1, Charles N. Williams, U. S. Commissioner. We will offer it in evidence now in this case.

Mr. McNAB.—We object to it on the ground that there is no proof at all that this is the father, absolutely. It is not the same name, and there is nothing in connection with it showing that it is the father, and it is incompetent, irrelevant and immaterial at this time.

The COURT.—Let's see it. (Court examines picture.)

Mr. DOCKWEILER.—What did you offer—all of the papers put together?

Mr. SCHOONOVER.—Or the picture; as little or as much as will be satisfactory to you.

Mr. McNAB.—Well, let us know. How much

(Testimony of Yee Chung.)

do you want? The picture?

Mr. SCHOONOVER.—We want to get the picture in at present.

Mr. McNAB.—Very well; we object to it as incompetent, irrelevant and immaterial and not proper cross-examination. [77]

Mr. DOCKWEILER.—Your Honor will understand that the only thing offered at this time is the photograph itself.

The COURT.—I understand that.

Mr. SCHOONOVER.—We will offer that, if it may be, separate from the balance, simply for identification at this time.

Mr. DOCKWEILER.—Oh, well, they can offer anything they want to for identification; but we understand you were offering it in evidence.

Mr. SCHOONOVER.—Well, we think it is competent to go in evidence now.

The COURT.—What is the purpose in offering the photograph, Mr. District Attorney?

Mr. SCHOONOVER.—Well, at this time, as far as developed now, it would be as going to the credibility of this witness. It appears that it was upon an exhibit that was introduced before the Commissioner and might, if necessary, be followed by proof that it was the identical picture shown him. The witness states that that was not the picture shown him, that the picture shown him at that time did not look like his father at all, and that this does.

The COURT.—Well, for that purpose it will be admitted.

(Testimony of Yee Chung.)

Mr. McNAB.—That is, I understand it applies simply to the photograph.

Mr. SCHOONOVER.—For the present, yes.

Q. (By Mr. SCHOONOVER.) What was your father's name? A. Kim Sing.

Q. You say you don't know how he did spell it?

The INTERPRETER.—In English?

Mr. SCHOONOVER.—Yes.

A. No.

Mr. SCHOONOVER.—Now, we next offer in evidence the certified list of copartners of the firm of Sam Sing Lee Kee & Company, [78] No. 40 Harrison Avenue, Boston, Massachusetts, including the name Yee Kim Shing. There are a lot of these here, and they are dittoed, including our friend King Shim (Kim Shing).

Mr. McNAB.—Just a moment. That does not go in the record, does it, your Honor?

The COURT.—I don't know whether it does or not; but if it does, who is harmed?

Mr. McNAB.—Your statement that this is your friend, Mr.—

The COURT.—Well, Mr. McNab, do not take up time on such small things as that.

Mr. McNAB.—But if your Honor please—

The COURT.—Well, I don't care to hear anything about it.

Mr. SCHOONOVER.—(Continuing.) Including Yee Kim Shing, and we offer it in connection with the balance of the record upon which this photograph appears, and would ask that the two go in together

as evidence that the person whose photograph has been submitted to this witness was the Yee Kim Shing as shown by this certified list of copartners doing business at that place at that time, and the balance of the record, bearing his photograph, for the purpose of showing that he was not in Boston as of the date the witness testifies he went down there from Burlington, Vermont, with the witness.

Mr. McNAB.—To which we object on the ground that it is not only incompetent, irrelevant and immaterial, but not proper cross-examination, and that its admission in evidence is not authorized by any statute proving this to be a public record. It is a mere *ex parte* declaration. It is not shown even to be the same party.

Mr. DOCKWEILER.—On the face of the record there it shows that there was a man, a member of that firm, by the name of Yee Kim Shing, and there is no date to the printed statement of the list of partners—so far as I could read it was a list of [79] partners deposited in 1903 with the Treasury Department officials and then turned over to the Immigration Bureau. We are dealing with 1897.

The COURT.—What, Mr. District Attorney, is your theory in respect to this, anyhow?

Mr. SCHOONOVER.—That shows officially, as we contend, the only Yee Kim Shing of that firm and at that place,—

Mr. DOCKWEILER.—At what time?

Mr. SCHOONOVER.—As of January, 1898.

Mr. DOCKWEILER.—Well, in the fall of 1897

and spring of 1898?

Mr. SCHOONOVER.—Yes.

Mr. DOCKWEILER.—Now, where is there any date on that?

Mr. SCHOONOVER.—There is a date there that it bears of 1896 somewhere.

Mr. DOCKWEILER.—Where? I see there is a lead-pencil memorandum on the side.

Mr. McNAB.—It was deposited, as I read it, eight years after this whole episode is alleged to have taken place.

Mr. DOCKWEILER.—Upon the face of it, your Honor, that list shows that there was a man who was a partner—that is, if it is a correct list it shows that Yee Kim Shing was a partner. That carries out the statements of the witness here. But we do not know what the date of that was; we don't know whether it is a correct list; we do not know by what authority of law it is contended by the Government that that document there in its present state of certification is proper to be admitted.

The COURT.—In this hearing I do not see that it is relevant even though it is what it purports to be.

Mr. McNAB.—It is dated years after this is alleged to have taken place and is between parties that he doesn't know anything about.

The COURT.—If there is a law that provides for the deposit of this sort of certificate and makes it evidence of the facts [80] therein contained, where is it? Surely the mere fact that the certificate has been filed would not be held conclusive as

against this defendant who did not know anything about it and had nothing to do with it.

Mr. SCHOONOVER.—Well, he says that a man who was a member of this firm on a particular date and of a particular name was his father. Now we show that as being a certified copy of a list of names of partners of that firm, as of the date it bears, filed in pursuance of regulations, an official record, and, as counsel says, it is a way of corroborating the witness that there was a partner by that name in that firm of that date.

The COURT.—Anyway, it refers to 1903, assuming the other positions are tenable. That is five years after the transaction.

Mr. SCHOONOVER.—Well, then we will withdraw our offer, at least for the present.

The COURT.—Very well; it will be withdrawn.

Mr. SCHOONOVER.—But we will offer the balance of this certified record here bearing the photograph which has been submitted to the witness, which includes the affidavit of Yee Kim Shing made on his oath on the 20th day of September, 1895, that he at that time was a member of the firm of Sam Sing, Lee Kee and Company, dealers in Chinese and other merchandise at No. 40 Harrison Avenue, in the City of Boston; that his interest in the firm amounted to $500; that he weighs 180 pounds, and is 5 feet, 4 inches high, etc.; and an affidavit of a man named Rand (?) for some purpose; together with a communication from the Chinese inspectors, a part of the file, addressed to the Collector

at Boston, Massachusetts; and also an indorsement that this person, Yee Kim Shing, departed from the port of Tacoma— [81]

Mr. SCHOONOVER.—And what is that?

Mr. McNAB.—Washington.

Mr. SCHOONOVER.—Washington, January 4, 1896; departed on British steamer "Victoria" January 4, 1896. And there are some indorsements on the cover here. And he was admitted again September 28, 1897, upon his return to this country.

Mr. McNAB.—Is that your offer?

Mr. SCHOONOVER.—Yes.

Mr. McNAB.—To this we object upon the ground that it is hearsay; that it is a declaration of a third party not binding upon this defendant; that the affidavit which is sought to be introduced is an affidavit of some party by the name of Yee Kim Shing stating the date of his birth and the interest that he held in a certain partnership among some 57 others, and accompanied by an affidavit of certain witnesses to the effect that they know him to be a merchant and not a laborer. If an affidavit of this kind were to be introduced in evidence, if your Honor please, they could just as well prove the guilt of this defendant and fire him out of this country on an affidavit signed by John Smith made to some other fact that might be pertinent to this record. This is a court of justice. In the Immigration Bureau they can act upon all sorts of papers—memoranda and other things—but in a court of justice we re-

quire evidence, and your Honor can plainly see that this is an *ex parte* declaration by another party, not ever shown to be the party they are discussing, concerning some facts that relate to him, which, if admitted, would prove facts which no one could disprove. Attached to this are certain letters and affidavits which certainly should not be introduced in a court of justice, including a letter by a Chinese inspector to the Collector of Customs at Boston, Massachusetts, stating various things concerning the photograph, the firm, the favorable character of the people who [82] are in the firm, that the firm of Sam Sing has 57 partners and carries a stock worth fourteen thousand dollars and appears to do good business and to be considered a *bona fide* mercantile firm. These are papers prepared evidently with the intention of establishing the mercantile status of somebody who wanted to leave the country and now they are sought to be introduced in evidence as *ex parte* declarations of third parties to prove facts against this defendant, and sworn to on the 20th of September, 1895, twelve years ago, two years before 1897.

The COURT.—What is your theory, Mr. District Attorney?

Mr. SCHOONOVER.—The purpose is not to prove the declaration of anybody except they appear to be a part of this particular file. We are not responsible for this man at 40 Harrison street; he was selected by the defense.

Mr. DOCKWEILER.—I would like to have your

(Testimony of Yee Chung.)

Honor read that whole thing. There is not a word said about whether he had a son or sons; there is no family history there or—

Mr. SCHOONOVER.—What I want to show is that this man that he selected as his father there at 40 Harrison street, as shown by the official records, could not have been at the time he says he went down there with him. That is the purpose of it.

The COURT.—Well, that would be pertinent if you had shown that. What do you say is the name of his father?

Mr. McNAB.—Yee Kim Sing (Shing?).

Mr. SCHOONOVER.—He says he does not know how to spell it.

Mr. DOCKWEILER.—But you understand that he refers to the English spelling of it.

Mr. SCHOONOVER.—Yes; he doesn't know whether it is Sing or Shing or what.

Q. (By the COURT.) Is this your father's name right here in Chinese characters (exhibiting document to witness)?

A. That is the name of my father, yes, sir. I don't know whether my father wrote it or not. [83]

Q. You don't know whether it is his signature or not? A. No, I do not.

Q. Did you ever see your father write his signature in Chinese characters?

A. My father was writing a letter—he was a good writer. This is not a good writer.

Q. Could your father write English?

A. He can sign his name in English. He was a

(Testimony of Yee Chung.)

good penman in Chinese.

The COURT.—What would be the English equivalent of that name, Mr. Interpreter?

The INTERPRETER.—Yee Kim Sing.

The WITNESS.—Yee Kim Sing.

Mr. McNAB.—Assuming that this affidavit were the affidavit of this man's father, how could it be introduced in evidence against the defendant when this defendant is not responsible for it, in a court of justice? It is an *ex parte* declaration of somebody, and how can it be introduced—as a matter of hearsay? The mere fact that it was filed with an immigration inspector or comes into his possession does not make it evidence. There is a tendency in the Immigration Department to consider any part of a paper that may bear on a question as a part of the record of files; but when appeal is taken to the District Court it must be a legal inquiry governed by judicial procedure and by rules of evidence. If evidence of this character were proper we might as well prove our contention by taking the affidavits, *ex parte,* of 40 witnesses from Boston to prove the contrary to be true. It is a matter we cannot possibly meet by cross-examination.

The COURT.—I do not know of any rule of evidence which would make it admissible. I do not know what the Department of Immigration may think about it. There could be no rule of evidence which could make it admissible. [84]

Q. (By Mr. SCHOONOVER.) You stayed in Boston after you came down there with your father,

(Testimony of Yee Chung.)

you say, three or four days before you went to Carnegie? A. Four or five days.

Q. When did you next see him then after you left Boston and went down to Carnegie?

A. I next met him in China.

Q. What year? A. K. S. 33.

Q. What month and date?

A. He was in China about the seventh month. That would be in August—

Mr. McNAB.—August or September, 1907, Mr. Brazie says.

The INTERPRETER.—Yes.

Q. (By Mr. SCHOONOVER.) That was, then, about ten years after you left him at Boston and went over to Carnegie? A. Yes.

Q. And when did you go to China?

A. I left there K. S. 33—

Q. Left where?

A. Seattle; that is, I sailed from Seattle on K. S. 33, the first month, 6th day.

Q. Would that be February or March, 1907?

The INTERPRETER.—Yes; somewhere along there.

Q. (By Mr. SCHOONOVER.) Then your father came how soon after that?

A. I understood he left Pittsburg in the middle of the fifth month and then went up there and shipped to China.

Q. And when did you see him in China—on what date? A. In the seventh month.

Q. And how long had you been there when he came, in China?

(Testimony of Yee Chung.)

A. Well, I reached home the second month of that year and he reached home the seventh month. [85]

Q. Where did you go when you got to China?

A. To my village.

Q. Is that where you first saw your father when he arrived? A. Yes, sir.

Q. And when did your father come back to America after that?

A. He never came back since then. I understand he didn't make out his paper to come back when he went the last time.

Q. And when did you come back?

A. I came back in Soon Hung the 1st; that would be 1909.

Q. Did you come from Hong Kong at that time?

A. Yes.

Q. And landed where here in this country?

A. San Francisco.

Q. On what boat? A. The "Manchuria."

Q. And did you make an application in 1914 for an investigation to enable you to go to China?

A. Yes, sir.

Q. Your application for investigation to enable you to go back to China was denied by the Commissioner of Immigration at San Francisco, was it?

Mr. McNAB.—I object to that as absolutely immaterial, the fact that it was denied. If they had any fact why it should be denied, they could produce it in this court. The fact that they did deny it is not evidence against this defendant.

The COURT.—What is the purpose of it?

Mr. SCHOONOVER.—Well, there has been a purpose throughout this hearing to show that at all times they accepted this man as being a native-born Chinese, and the record has gone in for that avowed purpose, and your Honor's attention especially called to the remarks of the Government agents in passing upon him favorably. [86]

The COURT.—No objection was made at any time.

Mr. SCHOONOVER.—No, but the statement was made by counsel for the Government that we had no objection to these going in upon the understanding that it would all go in. Now there has been a great effort here to talk about the best of good faith here and all that sort of thing, and I want to know right now if counsel do want to take the position that, having offered that for that avowed purpose, they are now going to object to us showing the exact status of this defendant at the time of his arrest.

Mr. McNAB.—If your Honor please, when Mr. Schoonover this morning stated—although I believe there was an equally great man of the same name—if I recall Mr. Schoonover's remarks when the matter was taken up this morning he said that they would wish to introduce the entire record. I said nothing, for the reason that those must be objected to as they come along. A record has been submitted to us here today, the typical immigration record. It consists of some matters that are doubtless material; it consists of letters, telegrams, suggestions inserted by an inspector to another inspector as to what he

thinks about certain matters; telegrams from within and without the United States in regard to certain investigations they have made, and a great mass of extraneous matter which is not evidence, but mere *ex parte* declarations of some inspector here or there in regard to certain features of the case and his views in regard to it.

Mr. SCHOONOVER.—We do not offer any of that.

Mr. McNAB.—Matters that actually relate chronologically or bear upon the question of whether or not this man is a native-born citizen of the United States we certainly have no objection to; but of course they must be matters which can be introduced in evidence. The point I make is this, if your Honor please: It is admitted by this witness that when he applied again in 1914 at San Francisco, after having been landed in 1909,— [87]

Mr. SCHOONOVER.—Last year.

Mr. McNAB.—Yes, shortly prior to his arrest,— he applied at San Francisco for reinvestigation with a view of going again to China, and he was denied the right to go. Now, reasons which an inspector may give in regard to it—

Mr. SCHOONOVER.—Well, let us go further than that if you are going to admit the record, and that there was an appeal from that to the Secretary of Labor and the appeal was affirmed. The findings of the Commissioner were approved.

Mr. McNAB.—That, if your Honor please, is not binding upon this court, nor is it evidence. I have

no objection to the Court knowing what it does show, because that does not go into the record. This record, let us assume, shows that an inspector at San Francisco took the legal view that the judgment of the Court in Vermont was not conclusive or not binding upon the Department, and that they had a right to go and investigate the matter themselves—

Mr. DOCKWEILER.—Pardon me. The inspector reported that he did not consider the record under regulation of November 5, 1913—that is, under circular of that date. Then it was conclusive on the subject of citizenship, your Honor.

The COURT.—You are telling me what this is all about in order to get the Court to rule that it is not admissible, which is a peculiar sort of a transaction. Much of this matter that has come in to-day appears to me to be incompetent, but no objection was made by the Government. Whether this man has passed through the barriers three or four or five or six times is immaterial. The question is, Is he a native born citizen? What somebody else may have done or thought or said is immaterial at this time.

Mr. SCHOONOVER.—I think that is true, and I thought what has gone in would have no effect on a decision by this Court. [88]

Mr. McNAB.—I have an authority on my desk to show that that ruling of the Commissioner in Vermont is absolutely conclusive and cannot be again inquired into.

The COURT.—That would depend on the primary question, as to whether or not this is the man.

Mr. SCHOONOVER.—That is the whole question here. We contend that this final refusal which was affirmed on appeal was based and the record shows it was based upon the insufficiency of the evidence to show that this was the man who was tried there in Vermont.

The COURT.—I do not think the acts of the Immigration people have anything to do here. If there is anything in the record to affect the question of the identity of this man, or to affect his actions or conduct, or tend to explain it, the situation is competent, otherwise not.

Mr. SCHOONOVER.—As far as this hearing is concerned, it doesn't make any difference, but if the record is going to be encumbered with the showing of the Government's agents favorable to this man, and the fact that this unfavorable action was subsequently is to be excluded strictly upon the technical grounds that no objection was made immediately at the time of its offer, I want now to insist that it was only permitted to go in without objection by the Government for the reason that I made preliminarily, at the outset of this hearing, the statement that those matters might go in showing the relations that this defendant had had with the Government for the purpose of handwriting, and I say now that I permitted it to go in with the intention of offering this in pursuance of that understanding, and unless we can now have admitted a record showing he was denied upon his application for pre-investigation the right to a return certificate enabling him to go to

China, and return, which shows the findings of the Commissioner upon the insufficiency of evidence [89] to show that he was the man who was before the Vermont court, was sustained finally by the Secretary of Commerce and Labor, and that that was the attitude of the Government towards him at the time he was arrested, that he was not the man.

Mr. McNAB.—How much of this do you want, Mr. Schoonover? There is about fifty pages.

Mr. SCHOONOVER.—No; I simply want what I have stated we want.

Mr. McNAB.—Will you kindly point it out?

Mr. SCHOONOVER.—We want the findings of the Commissioner, in the first place.

Mr. McNAB.—It seems to me that would be part of the Government's case and not proper cross-examination. We admit that he was denied the right to go to China.

The COURT.—Yes, it is part of the Government's case.

Mr. SCHOONOVER.—Will you admit at this time that he was denied the right because the Government held the insufficiency of his showing to the effect that he was the man who got the decree of the Vermont commissioner?

Mr. McNAB.—I think we can locate Mr. Edsall's report in the matter, your Honor. It is probably here. I have a copy of it.

Mr. McNAB.—The reasons given by Mr. Edsall in making his report, I think, is the strongest thing,

your Honor, and I take it that is what they really want.

(Counsel examining documents.)

Mr. SCHOONOVER.—Well, that is all right. I do not know that it is necessary to read it. It can be handed up to the Court and considered in evidence.

Mr. DOCKWEILER.—Well, I would like to read it, anyhow.

The COURT.—Do you want to admit it in evidence?

Mr. McNAB.—I understand the United States Attorney wishes that in evidence, and we have no objection, but we do not think it is relevant. [90]

The COURT.—It may be admitted.

Mr. DOCKWEILER.—I will read it now.

The COURT.—No, I will read it.

Mr. DOCKWEILER.—Now, that opinion sustains the contention I made, namely, that the rejection by the Immigration Service was because of the opinion that in view of the provisions of a circular issued—circular No. 5—that we do not think the proof was sufficient to show nativity. And by the way, we now ask, in view of the fact that the Commissioner has referred to that circular,—we would like to have a copy of the circular so that it can be put in.

Mr. Brazie, will you kindly produce a copy of that circular?

Mr. SCHOONOVER.—Wait until we get the attention of the Court.

(Court examines documents.)

Mr. McNAB.—Can we have some way of segregating that or have it copied by the reporter, as it is a pretty voluminous record?

The COURT.—The reporter can copy it into his record.

Mr. McNAB.—In conjunction with that, you will notice that Assistant Commissioner Edsall renders the opinion that he is not entitled to his papers for departure because of the failure of this judgment to be proved in accordance with a circular of November 5, 1914. Now, it seems to me that if this is to have any weight with the Court the Court should have a right to consider the provisions of this circular of November 5, and I would state to your Honor—and counsel on the other side, I am certain, will coincide with what I say—that on the 14th instant, nine days after the circular was issued, another circular was issued, which is a brief for the defendant in this case, and which sets forth the fact that these records are conclusive and sets forth all the authorities from the Supreme Court— [91]

The COURT.—Well, we will take it up, then, when the proof is offered.

Mr. SCHOONOVER.—We are not offering this to conclude the Court. It is purely an administrative or executive order, and it is only for the purpose of meeting the proposition that this man had been all the time recognized as a native citizen. That is all it is offered for. Now, I want to offer, in addition to this, the affirmation of that finding by the Secretary of Commerce and Labor.

Mr. McNAB.—I insist it is a part of the Government's case and not cross-examination, your Honor.

The COURT.—Well, I have so held a while ago.

Mr. SCHOONOVER.—But it would facilitate matters now while I have the instrument in my hand, to—

Mr. DOCKWEILER.—Now, that out of the way,—

Mr. SCHOONOVER.—Well, let us get this identified so that the reporter can get it in the record. It is on pages 14 and 13 of memorandum No. 12017, line 2844, dated March 13, 1914, and signed H. Edsall, Acting Commissioner.

Mr. DOCKWEILER.—Could we have that letter of November 5, 1914, page 3, that the Acting Commissioner refers to in his subpoena, Mr. Schoonover, please?

Mr. SCHOONOVER.—If the Court please, it is relevant to no issue in the case; it is some circular in the case that the Commissioner refers to there. The Government has no desire to enter into the matter for the purpose of precluding the Court at all, or insisting that the Commissioner's opinion was well or ill-founded, but simply to show that his application had been rejected.

The COURT.—Have you the circular they talk about?

Mr. SCHOONOVER.—I don't know whether I have or not.

The COURT.—Well, if you have, give it to them and let them look at it. [92]

Mr. DOCKWEILER.—He refers to circular issued November 5, 1913, and supplemental circular of November 14, 1913. I do not suppose it is there. It is their regular printed circular. I suppose Mr. Brazie knows where it can be found.

Mr. BRAZIE.—I am not the custodian of the records. Mr. Connell is the custodian of the records.

Mr. SCHOONOVER.—If we can procure it we will submit it to you.

Mr. McNAB.—That is entirely satisfactory.

Mr. DOCKWEILER.—And it looks as though we are now getting in a position where nobody will say anything in this case that will make the other fellow angry.

The COURT.—I hadn't noticed anything of that sort; if I had I would immediately have taken cognizance of it.

Mr. SCHOONOVER.—Will it be stipulated that the finding of this Acting Commissioner just admitted in evidence by stipulation here was affirmed by the Secretary of Commerce and Labor or by the Secretary of Labor?

Mr. McNAB.—I will look at the record, and if it was I will make no objection.

The COURT.—That is argument *ad hominem,* but I suppose it is proper to go in.

Mr. McNAB.—I wish you could see fit to put that in as part of your case, but I do not want to cripple you in the case if you want to put them in that way.

The COURT.—All right. Go on and cross-examine.

(Testimony of Yee Chung.)

Mr. SCHOONOVER.—Well, shall I introduce it at this time, then?

The COURT.—No; as part of your case.

Mr. SCHOONOVER.—All right.

Mr. McNAB.—All you want to prove is that that was affirmed, is it not?

Mr. SCHOONOVER.—Yes.

Mr. McNAB.—Well, we admit that. [93]

Q. (By Mr. SCHOONOVER.) These certificates that you had from Commissioner Johnson, where were they prepared or written?

Mr. McNAB.—We *we* object to that on the ground that the witness could not possibly know, as he testified that it was given to him afterwards, and he did not see it written.

Mr. SCHOONOVER.—I refer, for counsel's information, to his Exhibits "A" and "B."

(Last question read.)

Mr. McNAB.—The witness having testified that they were given to him afterwards in Boston, and that he did not see them written, he could not answer that.

The COURT.—Maybe not. He did not say that he did not see them written. Maybe he did see them written. The objection is overruled.

A. It was given by the Judge. My father gave it to me.

Q. (By Mr. SCHOONOVER.) Whereabouts?

A. In Boston.

Q. Did you see it before your father handed it to you? A. No.

(Testimony of Yee Chung.)

Mr. McNAB.—When he answered that question he undoubtedly had in mind the original certificate he lost on board the "Dakota."

Mr. SCHOONOVER.—Well, what I mean is the certificate you had in Seattle. This certificate of Inspector Stewart. That is what I mean.

Q. Where did you first see that certificate, being Defendant's Exhibit "A" in this case?

A. It was prepared by Mr. Donohue in K. S. 32—that is in 1902.

Q. And where was Mr. Donohue when he prepared it?

A. Why, he sent to Vermont to have it done.

Q. To have it signed, after he had prepared it?

A. Why, he got that paper that was originally given to me to make **[94]** this paper, and this paper was made from it and then sent to Vermont.

Q. (By Mr. DOCKWEILER.) Where was Mr. Donahue residing at the time?

The COURT.—Preaching Presbyterianism in Pittsburg.

Q. (By Mr. SCHOONOVER.) Ask him if he sent this prepared, to be signed, to Mr. Johnson, as appears there.

A. He got my photographs and got the paper that I gave him and made out the paper and sent it to him. The paper was handed to me in whole, like this, afterwards.

Mr. SCHOONOVER.—I believe that is all at this time.

Mr. DOCKWEILER.—I want to call your

(Testimony of Yee Chung.)

Honor's attention to the fact that the witness at different times since is named Yee Chong and Yee Chung. The bond in this case, I think, is signed Chong. This exhibit "A" is Chung. It is quite obvious upon an inspection of the papers, Mr. Schoonover, that the signatures are by the same party.

Mr. McNAB.—During the cross-examination of the witness he was asked concerning his replies to certain questions stated in these various examinations. I think there were three gone into. We would like to offer the entire examination of the applicant at this time, to show that when the entire record is taken together, is consistent, truthful, and is in conformity with his testimony here, that is, in accordance with the rule that *were* a portion of the examination is asked for we claim it is consistent to have the entire matter put in. There are some three or four pages of it.

The COURT.—I do not know of any such rule. They have not offered it in evidence themselves; they merely asked him if he made such statements, and he said yes, and that is an end of it.

Mr. SCHOONOVER.—It is not in evidence.

The COURT.—If they offered parts in evidence then you could offer the balance of it. **[95]**

Redirect Examination.

(By Mr. McNAB.)

Q. How many children have you?

Mr. SCHOONOVER.—I object to that as fully gone into and definitely stated. He has two chil-

(Testimony of Yee Chung.)

dren. The dates of their births and names are in the record.

Mr. McNAB.—It is not gone into. He stated that he had two who had been landed in this country.

The COURT.—The objection is overruled. Go on.

A. Four.

Q. (By Mr. McNAB.) You stated in answer to a question by Mr. Schoonover that you bought your ticket when you came over to Vancouver in Hong Kong. I understood you to say that you bought it at a Chinese store. Did I correctly understand you? A. Yes, sir.

Q. At that time where did the Chinese, desirous of taking a ship across the Pacific Ocean, buy their tickets? Did they buy them from the steamship company at all, or did they buy them from a Chinese store?

Mr. SCHOONOVER.—I object to that unless some foundation is laid.

Mr. McNAB.—I will prove the custom, your Honor.

Mr. SCHOONOVER.—I object to this witness testifying without laying a foundation.

The COURT.—Yes, the objection is sustained. Is there any controversy that he did buy it at the Chinese store?

Mr. SCHOONOVER.—Not at all.

Mr. McNAB.—I propose to show that all of these tickets were sold by brokers.

(Testimony of Lee Leung.)

The COURT.—Well, we will assume so.

Mr. McNAB.—That is all. The next witness is Lee Leung. **[96]**

Testimony of Lee Leung, for Defendant.

LEE LEUNG, a witness called on behalf of the defendant, having been first duly sworn, testified through the interpreter as follows:

Direct Examination.

(By Mr. McNAB.)

Q. What is your full name? A. Lee Leung.

Q. How do you spell it?

Mr. McNAB.—You had better spell it, I guess, Mr. Interpreter.

The INTERPRETER.—L-e-e L-e-u-n-g.

Mr. SCHOONOVER.—Leung, L-e u-n-g?

The INTERPRETER.—Leung, L-e-u-n-g, yes.

Q. (By Mr. McNAB.) Where were you born?

A. I was born in China.

Q. When?

A. I was born in the ninth year of Hom Fung.

Mr. BRAZIE.—1859.

Q. (By Mr. McNAB.) When did you come to the United States? A. K. S. first; 1875.

Q. What is your business?

A. I have been a cigar maker.

Q. Did you know Yee Kim Sing, the man who Mr. Yee Chung testifies was his father? A. Yes, sir.

Q. Where did you know him?

A. In San Francisco when he was a storekeeper there.

(Testimony of Lee Leung.)

Q. And for the last 40 years where have you lived? A. In San Francisco.

Q. All the time? A. Yes, sir. **[97]**

Q. When did you first know Yee King Sing?

A. I first knew him I think about K. S. third or fourth. About that time. That was in 1873—1877 or 1878.

Q. Where was he living when you first got acquainted with him?

A. He was a storekeeper in Sacramento Street, No. 728.

Q. What kind of a store?

A. Chinese general merchandise. such as rice and oil and other stuffs.

Q. Did you know his wife?

A. When I first knew him he had a wife, yes.

Q. What was her name?

A. I was told that his wife was Wong Shee.

Q. Where did they live?

A. Just upstairs over the store in the same building.

Q. At 728 Sacramento Street? A. Yes. sir.

Q. Do you know anything about a baby being born to Yee Kim Sing and his wife?

A. Yes, about a couple of years afterwards there was a boy born to them.

Q. Did you see that baby?

A. I saw it when I went in there, about a couple of weeks old.

Q. About how often did you see it?

A. That was the first time I saw him, and then

(Testimony of Lee Leung.)

after the shaving then I saw him more often.

Q. Now, you have referred to the shaving. What do you mean by the shaving? Explain to the Court.

A. Well, the Chinese custom is this—that when a child is born, a month after that they shave him and give him a name.

Q. What kind of a surname do they have?

A. Well, then they first shave him their friends generally give the baby a present, and then the friends are invited to a feast [98] to celebrate that birth—or shaving.

Q. Did they have a feast to celebrate the shaving of this baby? A. Yes.

Q. Where was that feast held?

A. The feast was at the Hang Farlow restaurant.

Q. And what was the baby's name?

A. Well, they gave him the name Yee Chung.

Q. Were you living in San Francisco at the time Yee Kim Sing went away to China?

A. Yes, sir.

Q. About how old was this baby Yee Chung at that time? A. At the time he went to China?

Q. Yes.

A. About two years, I guess. The husband and wife and the boy.

Q. All went to China? A. Yes.

Q. Did you go to China yourself after that?

A. Yes, sir.

Q. When did you go to China first?

A. I went to China in the latter part of the year K. S. 18.

(Testimony of Lee Leung.)

Mr. McNAB.—That was in 1892?

Q. How many years was that after Yee Kim Sing and his wife and the baby, Yee Chung, had gone to China? About how many years?

A. Oh, more than ten years; about 11 or 12 years, I guess.

Q. About how long after Yee Kim Sing and his wife and baby went to China was it before Yee Kim Sing returned to San Francisco from China?

A. Only a few months.

Q. Now, when you went to China did Yee Kim Sing send anything by you? A. Yes.

Q. What was it? **[99]**

A. A letter and some Mexican money.

Q. How much money? A. $100.

Q. Who was that money to be given to?

A. The mother of this Yee Chung, *Wah* Shee.

Q. That is Yee Kim Sing's wife? A. Yes, sir.

Q. When you went back to China did you go to the village where Yee Chung and his mother were living? A. Yes, sir.

Q. Did you see them both? A. Yes, sir.

Q. About how long did you stay in China on that trip? A. Over a year.

Q. When you left San Francisco under what status did you go—merchant or otherwise?

A. Merchant, because I was a member of Quong Chung Sing's store.

Q. During the year that you were in China about how often did you see Yee Chung and his mother?

A. Two or three times.

(Testimony of Lee Leung.)

Q. About how big a boy was Lee Chung when you left China to come back again?

A. About 14 or 15.

Q. Do you remember anything that happened on China New Year, 1893, in China, while you were in China?

A. Yes. I went over there on a visit, the same as a New Year call, to see them.

Q. To see whom?

A. Yee Kim Sing's wife and Yee Chung.

Q. Now, when did you come back to San Francisco? A. K. S. 20; 1894.

Q. Before leaving China for San Francisco did you call on Yee **[100]** Chung and his mother?

A. Yes, sir.

Q. What did you do while you were there?

A. Well, I simply went up there to see them, if they were well, if the family was well, and whether there was any letter sent back.

Q. And *when* you came back to San Francisco, did you not? A. Yes, sir.

Q. You know Yee Chung now, do you?

A. Yes.

Q. Is that the same person that you knew as a boy when you were visiting China as Yee Chung?

A. Yes, sir.

Q. When Yee Chung came on to San Francisco in 1909 did you see him then?

A. Yes, when he came back from China.

Q. Did you see him often at that time?

A. Yes.

(Testimony of Lee Leung.)

Q. Where did you visit with him?

A. I was told that Yee Kim Sing's son, Yee Chung, came back from China, and was staying in the Quong Chung Sing's store, and so I went there to see him.

Q. What number, do you remember?

A. 741 Commercial Street.

Q. 741 or 744?

A. I don't remember. Yes, about 744.

Q. About how often did you visit with him on that trip?

A. Well, I went to the store several times, and he came up to my room.

Q. Did you on these visits talk over the time you were in China when he was a boy? **[101]**

A. I asked him if the parents were still living and how were the family getting along and so forth.

Q. And were the parents still living?

A. Yes.

Q. When he came back from Pennsylvania this last time, did the witness see Yee Chung? That was in 1914.

A. Yes, sir. I saw him last year.

Q. Where did he visit with him there?

A. I met him on the street when I was out working.

Q. Did you visit with him often? A. Yes.

Q. In those times did he discuss with him the trip, at the time he saw him in China, and about his mother and father?

(Testimony of Lee Leung.)

The INTERPRETER.—You mean the last year?

Mr. McNAB.—Yes.

Mr. McNAB.—That is all.

Cross-examination.

(By Mr. SCHOONOVER.)

Q. What is your place of business in San Francisco?

A. At the present time I am working.

Q. At what business? A. Cigar making.

Q. Who are you working for?

A. The Comstock cigar factory.

Q. Where is their factory?

A. 434 Jackson Street.

Q. What was your business when you first knew Yee Kim Sing?

A. At that time I was a cigar-maker; just learning the cigar trade.

Q. Where were you working then? **[102]**

A. In Chinese cigar factories.

Q. And what was the first you knew of Yee Kim Sing—what date?

A. It was in K. S. three; 1877.

Q. *T*here was he then when you first knew him?

A. He was engaged in business.

Q. What kind of business? Where was it?

A. General merchandise, such as rice and oil and other merchandise.

Q. At what street and number?

A. It was at Quong Wah Chung's store, 728 Sacramento street.

Q. And where were you working when you first

(Testimony of Lee Leung.)

met him there at that store?

A. I was working at a Chinese cigar factory, the Funk Lee factory.

Q. What street number was that?

A. Front Street.

Q. How far was that from where Yee Kim Sing's store was?

A. Well, Yee Kim Sing's store was up in Chinatown, several streets away from it.

Q. And where did you live while you were working down on Front Street? A. In Chinatown.

Q. How near to the store of Yee Kim Sing did you live?

A. Just in the same block, except that I was in the other side, corner of Commercial and Dupont Streets, in that Spanish building; and the other store was just around the other corner, in Sacramento Street.

Q. You say you were told that this woman was the wife of Yee Kim Sing. What do you mean by that?

A. Yes. Yee Kim Sing told me so.

Q. He said this woman was his wife?

A. Yes, sir. [103]

Q. Where did you first see the baby you say they had there?

A. Well, I went to the store, and then he told me that he was very glad, having a boy born to him, and he took me up to his residence, his room, to see the baby, and I saw his wife in care of the baby. I saw her there.

Q. In what year was that? A. K. S. 6.

(Testimony of Lee Leung.)

Mr. BRAZIE.—That is 1880.

Q. (By Mr. SCHOONOVER.) What month and day, if you know.

A. It was early, in the first of the year. The factories had not resumed working yet. I think it was either the 7th or 8th of the first month.

Q. Who else was in the store of Yee Kim Sing at that time when you saw the baby?

A. Well, the partners in that firm.

Q. How many partners did he have?

A. I don't know how many partners were there, but I knew of three, Yee Kim Sing, Yee Him Wah and Yee Kay. All I knew was three.

Q. Did those three Chinese work in the store with Yee Kim Sing at that time?

A. Yes, together there.

Q. Did those other three Chinamen have families?

A. I don't know.

Q. Did you know these other partners as well as you knew Yee Kim Sing at that time? Were you acquainted with all of them about the same?

A. Well, when I visited the store I knew them all.

Q. Where did these other partners live?

A. Why, I have heard that Yee Kay went to China and died there.

Q. No, but ask him if he knows where the other three partners lived at the time he saw this little baby there. [104]

A. I don't know. Perhaps they were living in the back room there.

Q. Were either of the other three partners mar-

(Testimony of Lee Leung.)

ried at that time?

A. I don't know whether they had any.

Q. Neither of the other three partners ever told you whether they were married or not?

A. No, sir.

Q. Neither of the other partners ever told you whether they had any children or not?

A. No, sir.

Q. Never told you where they lived?

A. No, sir.

Q. And you didn't know? A. No, sir.

Q. How long had they been partners with Yee Kim Sing?

A. I don't know how long they had been partners before I knew them, but up to K. S. 22, at the time when Yee Kim Sing sold his business.

Q. They were all partners together when you first knew Yee Kim Sing, were they? A. Yes, sir.

The COURT.—It is about 5 o'clock now, and we will take a recess until to-morrow morning at 10 o'clock.

(A recess was thereupon taken until Saturday, April 3, 1915, at ten A. M.) [105]

Saturday, April 3, 1915, 10 o'clock A. M.

LEE LEUNG, recalled.

The COURT.—Proceed with the evidence, gentlemen.

Mr. SCHOONOVER.—If your Honor please, in plaintiff's exhibit introduced yesterday, being memoranda on pages 13 and 14 of the file indentified in the reporter's notes, reference is made to a Bureau

(Testimony of Lee Leung.)

letter of November 5, 1913, and further reference, in parenthesis, in the document in evidence, page 3. We find page 3 refers to page 3 of this same file, and in compliance with Mr. Dockweiler's request we submit the circular referred to under date of November 5, 1913.

Mr. DOCKWEILER.—Have you also the supplementary circular issued November 14; that is, the circular supplementary to the circular of November 5?

Mr. SCHOONOVER.—Well, I don't know about that. There is no reference to anything in the document—

Mr. DOCKWEILER.—May it please the Court, we at this time request the Government to produce for our inspection circular of November 5, 1913, and circular of November 14, 1913, supplementary thereto and a part thereof, for the purpose, first, of enabling us to examine the circular specifically referred to in the decision, that is now in evidence now as a part of the Government's case, and secondly, for the purpose of enabling us to ascertain whether the decision, in referring to circular of November 5, also referred to the supplement of November 14, 1913.

Mr. SCHOONOVER.—I do not know where he gets his reference to the November 14, 1913, circular. There is no reference to it in the document already introduced in evidence.

The COURT.—I don't either, and I am not worrying about it, because I don't intend to pay any attention to it. This case cannot be decided on circulars.

[106]

(Testimony of Lee Leung.)

Mr. SCHOONOVER.—Inasmuch as the document we did introduce referred to circulars, it may be considered as part of it, and that we tender, but nothing more.

The COURT.—All right. Proceed.

Mr. DOCKWEILER.—Exception.

Q. (By Mr. SCHOONOVER.) Do you recognize this photograph as being the photograph of anybody you know (exhibiting picture)?

A. No, I don't know this man.

Q. You never saw him? A. No.

Mr. SCHOONOVER.—This is the photograph heretofore introduced in evidence. It was admitted in evidence and heretofore submitted to the defendant.

Mr. McNAB.—My recollection is that it was offered for identification.

The COURT.—No, it was introduced in evidence, the photograph was, and admitted. He said it looked like his father, and for that reason I submitted it to be introduced in evidence.

Mr. SCHOONOVER.—That is all.

Mr. McNAB.—That is all. [107]

Testimony of Yee Ying Dock, for Defendant.

YEE YING DOCK, a witness called on behalf of the defendant, having been first duly sworn, testified through the interpreter as follows:

Direct Examination.

(By Mr. McNAB.)

Q. What is your name?

The INTERPRETER.—According to his own

(Testimony of Yee Ying Dock.)

dialect, that last name would be Ark. Sometimes it is called Tock, or Toc, or something of that sort.

Mr. SCHOONOVER.—That same confusion obtains in the names Sing and Shing, does it not?

Mr. McNAB.—Well, we will find out about that.

Q. How old are you? A. Fifty-one.

Q. Where were you born?

A. In San Francisco.

Q. Where? A. Sacramento Street.

Q. What number in Sacramento Street?

A. 741.

Mr. SCHOONOVER.—It seems probable this witness could talk English if he was born in San Francisco fifty-one years ago.

Mr. McNAB.—Well, it is very unsatisfactory, if your Honor please. I have conversed with him, but part of the time it is fairly intelligible and part of the time it is not.

The COURT.—Do you understand English?

The WITNESS.—I don't know. I couldn't answer all of it.

The COURT.—How do you know? You can carry on an ordinary conversation in English, can't you?

The WITNESS.—I know some of it, but I couldn't understand all of it.

The COURT.—Very well. Proceed. [108]

Mr. DOCKWEILER.—He commenced before the Commissioner to testify and each side at times could not understand him, so we concluded to have an interpreter.

(Testimony of Yee Ying Dock.)

Q. (By Mr. McNAB.) What was your father doing in San Francisco at that time?

A. He was a merchant.

Q. What was the firm name?

A. The Hung Wo store.

Q. Where was that store situated with regard to the store where Yee Kim Sing worked?

Mr. SCHOONOVER.—I object to the question as assuming the witness knows anything about Yee Kim Sing.

Mr. McNAB.—I will withdraw the question.

Q. Did you know Yee Kim Sing? A. Yes, sir.

Q. Where did Yee Kim Sing live?

A. Just across the street.

Q. Where was your father's store located with regard to the store where Yee Kim Sing worked?

A. Diagonally across the street.

Q. Where you in San Francisco at the time a baby was born to the wife of Yee Kim Sing, or had you left for China?

Mr. SCHOONOVER.—I object to that as assuming that there was a baby born and that the witness left for China. It is paving the way for the witness to testify.

Q. (By Mr. McNAB.) Have you always lived in San Francisco, or have you been in China?

A. I have been to China.

Q. When did you first go to China?

A. K. S. 5; 1879.

Q. Before you left for China in K. S. 5, did you know the wife of Yee Kim Sing?

(Testimony of Yee Ying Dock.)

A. Yes, sir. [109]

Q. Now, had Yee Kim Sing and his wife any child or children at the time you left for China in K. S. 5?

A. No.

Q. After you went to China in K. S. 5 what was the first time you saw Yee Kim Sing? A. K. S. 7.

Mr. BRAZIE.—That is in 1881.

Q. (By Mr. McNAB.) Where? A. In China.

Q. Where did you see him? A. In the village.

Q. What is the village? A. Chow Duey.

Q. When Yee Kim Sing came back to China and to this village was his wife with him? A. Yes.

Mr. SCHOONOVER.—Now, I object to that, befor it is answered. It appears that the witness saw them there, and counsel asks him, after they came back there did he see them, assuming they came back. Arrived there from any point.

(Last question read.)

Mr. SCHOONOVER.—I object to it as not showing that the witness knew he ever came back there.

The COURT.—He said he saw him there. The objection is overruled.

Mr. SCHOONOVER.—No; he said he saw him in San Francisco in 1879, and that he himself went to China in 1881.

The COURT.—And he saw him in this village in China.

Mr. SCHOONOVER.—Yes, I am wrong.

(Last question read.)

A. His wife and a boy.

(Testimony of Yee Ying Dock.)

Q. (By Mr. McNAB.) About how big and how old was he?

A. Well, about two years old. **[110]**

Q. How often did you see Yee Kim Sing, his wife, and this boy while you were in China?

A. Why, the defendant's mother and father came over to my house almost every month, and I went over there to their house quite often.

Q. How long did you remain in China?

A. About eight years.

The WITNESS.—No; about ten years; nearly ten years.

Q. (By Mr. McNAB.) Now, during this ten years that you remained in China, about how often did you see this boy?

A. Well, I went over to their house several times in a year and they came over to my house almost monthly.

Q. What was the boy's name? A. Yee Chung.

Q. Can you say whether this Yee Chung was the same person that you knew there as that boy?

A. Yes, sir.

Q. About how long, if you remember, did Yee Ki*ng* Sing remain in China on that trip.

A. A few months.

Q. Where did he go then? Do you know?

A. He came back to San Francisco.

Q. After he left for San Francisco did you still continue to visit back and forward with his wife and with Yee Chung?

A. Yes, sir; very often, because it was during my

(Testimony of Yee Ying Dock.)

time in China I was visiting the boy and they visited me almost monthly.

Q. Before Yee Kim Sing came on to China—I have forgotten the date you gave in Chinese, but in 1881,—do you know anything about your father getting a letter from Yee Kim Sing about the birth of a boy?

Mr. SCHOONOVER.—Objected to as no proper foundation laid, incompetent, irrelevant and immaterial, and hearsay. [111]

The COURT.—In what respect has no foundation been laid?

Mr. SCHOONOVER.—Well, that may not be the proper objection at this time, but it is incompetent, irrelevant and immaterial and hearsay.

(Last question read.)

The COURT.—Yes, that would seem to be hearsay.

Mr. McNAB.—Unless it goes in under the head of pedigree, your Honor.

The COURT.—Well, pedigree is limited to statements made by one deceased in reference to the birth or ancestry or pedigree, but I hardly believe it is included within the scope of a missive sent across the water.

Mr. McNAB.—I will withdraw the question.

Q. (By Mr. McNAB.) After you arrived in China did you receive a letter that was written by Yee Kim Sing to your father in regard to his family affairs in San Francisco?

Mr. SCHOONOVER.—Objected to as incompetent, irrelevant and immaterial. It does not appear

(Testimony of Yee Ying Dock.)

that it would tend to establish or disprove any issue in the case.

Mr. DOCKWEILER.—It is preliminary.

The COURT.—Yes, it is hearsay. The objection is sustained. It is incompetent.

Mr. McNAB.—And without intending in the slightest degree to interfere with your Honor's ruling, but in order to get the entire question in the record, I will amplify the question in this respect:

Q. After you had gone to China did you see letters written by Yee Kim Sing to your father announcing the birth of a boy and the name that they had given him?

Mr. SCHOONOVER.—Objected to as incompetent, irrelevant, and immaterial, and calling for hearsay testimony.

The COURT.—The objection is sustained.

Mr. McNAB.—And we except.

Q. Now, did you, while in China, and shortly after you arrived there, see any correspondence between Yee Kim Sing and your father at all?

Mr. SCHOONOVER.—Objected to on the same grounds as the [112] objection made to the former question.

The COURT.—The objection is sustained.

Q. (By Mr. McNAB.) You say that Yee Kim Sing returned to San Francisco a few months after he arrived there. Now, when did you come back from China? A. I returned in K. S. 16.

The INTERPRETER.—That would be 1890.

Q. (By Mr. McNAB.) When you returned to

(Testimony of Yee Ying Dock.)

America where did you go? What part of America did you go to? A. To San Francisco.

Q. Did you see Yee Kim Sing on your return?

A. Yes, sir.

Q. Did you afterwards return to China, again, the second time? A. Yes, sir.

Q. In what year? A. K. S. 21; 1895.

Q. What month?

A. I was passing the Chinese New Year on board the steamship and reached Hong Kong on the Chinese New Year—that is, after the Chinese New Year; it would be somewheres, I think, in January, when I left there, in 1896.

Mr. BRAZIE—February 13, 1896.

Mr. SCHOONOVER.—He was on the boat, then, at that time.

The INTERPRETER.—The witness says that he left the port at Tacoma.

Q. (By Mr. McNAB.) Now, while you were in China on this trip did you see Yee Chung?

A. Yes, sir.

Q. This same man here? A. Yes, sir.

Q. The same man that you saw as a little boy in China when you were there the first time? [113]

A. Yes, sir. He has about the same features, yes sir.

Q. And the same Yee Chung that came on with Yee Kim Sing and his wife from San Francisco?

Mr. SCHOONOVER.—We object to that. There is no evidence at all that this witness knows any-

(Testimony of Yee Ying Dock.)

thing about their coming-together place where he saw them.

(Last question read.)

Mr. SCHOONOVER.—That is what I object to.

Mr. McNAB.—He testified to that before.

The COURT.—Yes. The objection is overruled.

A. Yes, sir, because when they arrived there his parents said that was their son.

Q. (By Mr. McNAB.) Now, while you were in China on this trip in 1896 how long did you remain in China? A. One year and eight months.

Q. During the time you were there did anything happen in regard to Yee Chung that you remember?

A. At that time he married, in the latter part of that year, K. S. 22.

Q. Now, before you left China, had anything further happened in regard to Yee Chung that you remember?

A. Well, there was a boy born to him in K. S. 23, and I partook of the feast which he set to celebrate his boy's birth.

Q. How do you know that Yee Chung was married when you were back there?

A. Well, I was invited to the marriage feast.

Q. You say you were invited to the marriage feast; did you attend the marriage? A. Yes.

Q. After your return from China did you again return to that country?

A. Yes, sir, I returned to the United States via the port of Tacoma. [114]

Q. When did you say you returned to China the last time?

(Testimony of Yee Ying Dock.)

A. The last time, K. S. 33; that is 1907.

Q. At that time did you see Yee Chung's wife?

A. Yes, sir.

Q. And his children? A. Yes, sir.

Q. Where did you see the family?

A. In Chow Duey village.

Q. About how often did you see them while you were back there this last trip?

A. I have been to his place, that is, I visited his family several times, and they came over to my house several times.

Q. Now, after Yee Chung came back to the United States do you know where he has been living?

A. Yes; in Pittsburg.

Q. How do you know it?

A. By correspondence.

Q. With Yee Chung personally?

A. Yes, sir; two or three times a year.

Q. What is your business in San Francisco?

A. Merchant; Chinese drugs and medicine.

Q. How long have you been in that business?

A. Over three years last past.

Q. Where is your business located?

A. In Dupont Street.

Q. What number? A. 830.

Q. How large a store is that?

A. A good size store.

Q. Have you always been in business by yourself since you have been in San Francisco?

A. Yes. [115]

Q. At one time were you a registered voter of San Francisco?

(Testimony of Yee Ying Dock.)

A. I was registered in K. S. 17; that is one time.

Mr. BRAZIE.—That is in 1891.

Q. (By Mr. McNAB.) Any other time besides K. S. 17?

A. To vote, that is one time, K. S. 17, the last part of the year.

Q. Did you vote? A. Yes, only one time.

Mr. McNAB.—That is all.

Cross-examination.

(By Mr. SCHOONOVER.)

Q. What boat did you go to China on the first time?

A. I forget the name of that ship; it was a very small ship.

Q. Where did you sail from in this country?

A. San Francisco.

Q. Where did you land in China?

A. Hong Kong.

Q. That was in 1879, was it? A. Yes.

Q. What month did you leave the port of San Francisco in 1879? A. The fifth month.

Q. Do you remember the day?

A. No.

Q. (By Mr. McNAB.) The fifth month Chinese or English? A. Chinese.

Q. (By Mr. SCHOONOVER.) What name did you sail under from San Francisco in 1879 to Hong Kong?

A. That is the only name I have always had.

Mr. SCHOONOVER.—Yee Ying Ark.

The INTERPRETER.—Yee Ying Ark, yes.

(Testimony of Yee Ying Dock.)

Mr. SCHOONOVER.—Do you say that that sometimes is spelled D-o-c-k, his last name? **[116]**

The INTERPRETER.—That is my explanation. Sometimes they do spell it D-o-c-k.

Q. (By Mr. SCHOONOVER.) Ask him how he spells his last name.

A. I don't remember how it was spelled before.

Q. Ask him if he remembers the examination here before Commissioner Williams in this same case in which he testified last August. A. Yes, sir.

Q. Ask him if he remembers that he was asked by Mr. Dockweiler, his counsel, what his name was, and he answered "Yee Yin Dock."

A. Yes, Yee Yin Dock.

Q. And Mr. Dockweiler then asked him: "How do you spell that?" and he answered, "Y-e-e Y-i-n D-o-c-k."

A. I don't know whether—I might have spelled it that way.

Q. And then Mr. Dockweiler spelled "D-o-c-k"? and you said, "Yes, sir."

A. Yes. He said—asked me, and I said yes.

Q. And then Mr. Dockweiler said, "Capital D"? And you said "Capital D."

A. Well, because I repeated after him.

Q. What boat did you come back on when you returned from China, after you went over in 1879?

A. I came back in 1890 on the steamship "Oceanic."

Q. And landed where in this country?

A. In San Francisco.

(Testimony of Yee Ying Dock.)

Q. What month did you land in San Francisco on the "Oceanic"?

A. I arrived, I think it was the fourth day of the fifth month. I am not certain, but it was near that time.

Q. That was in 1890, you say? A. Yes, sir.

Mr. McNAB.—The fourth day of the fifth month of what? [117]

The INTERPRETER.—That would be the latter part of June, I think.

Mr. McNAB.—Yes, but what year was it?

The INTERPRETER.—1890.

Q. (By Mr. SCHOONOVER.) Then where did you live in this country from 1890 until 1895 when you returned to China again? A. Yes, sir.

Q. Where did you live, I say?

Q. Now, I stayed in San Francisco up to about the first month of the 18th year, 1892; from there I went to Denver and stayed there about ten months; then I went to Florida.

Q. I will ask you if you remember in the examination heretofore before Commissioner Williams that your counsel, Mr. Dockweiler, asked you "How long did you remain in Denver?" And you answered, "I lived in Denver pretty near ten years."

A. I said ten months.

Q. And then Mr. Dockweiler said, "Ten years?" and you said, "Uh-huh."

A. No, I said "ten months."

Q. And did Mr. Dockweiler say ten months when he asked you the question the second time?

(Testimony of Yee Ying Dock.)

A. I forget how he asked me, but I resided there only ten months.

Mr. McNAB.—I notice also the reporter's notes say Tampa, Colorado, which should be Tampa, Florida.

Mr. DOCKWEILER.—For instance, here is a question: "Now, have you lived in San Francisco ever since Kuong Suey 23?

A. —Yes, I lived there a few months"; and then the word "Colorado" follows.

Mr. SCHOONOVER.—It appears here he said he had lived in Denver ten years, and his counsel asked him, "Ten years?" and he said, "Uh-huh," and his answer in the affirmative is just as he gave it—"Uh-huh." [118]

The COURT.—Yes, I appreciate all of that.

Mr. DOCKWEILER.—No, it is "Oohoo."

The COURT.—There are lots of people that are not infallible, and reporters are among them—present company not excepted. Go on.

Q. Had you lived anywhere except San Francisco from 1879, the date of your birth, until you made your first trip to China? A. No.

Q. Did you live anywhere between 1890 when you returned to San Francisco from China to 1895 when you made your second trip to China except San Francisco and Denver?

A. From there I went to Tampa, Florida.

Q. And how long were you in Tampa, Florida?

A. Nearly three years; almost three years.

Q. Then where did you go from Tampa?

(Testimony of Yee Ying Dock.)

A. I visited at Durant two months. My permanent headquarters was Denver. They have got lots of oranges down there. It was in the orange groves.

Q. Well, how much time did you spend at this town of Durand, or whatever it is?

A. About two months.

Q. And from where did you go from there?

A. Went back to Tampa.

Q. And where did you go from Tampa?

A. I remained there until I started for China.

Q. And where did you start for China? That was in 1895, I mean.

Mr. McNAB.—No, 1896, was it not?

A. I took the train to Savannah and then from there I shipped to New York and from New York to Tacoma.

Q. What boat was it you took at Tacoma for Hong Kong?

A. It was an old ship; something like "Hen Kow," but it was an old ship. [119]

Q. What date did it leave Tacoma?

A. It was in the latter part of the 12th month, because we passed Chinese New Year's aboard ship.

Q. The latter part of the 12th month would be what year in Chinese? A. K. S. 21.

Q. You were on board this boat on the Chinese New Year? A. Yes.

Q. Is that February 18, 1896?

Mr. McNAB.—Mr. Brazie informs us that Chinese New Year, which is a variable date, was on the 13th of February in 1896.

(Testimony of Yee Ying Dock.)

Q. (By Mr. SCHOONOVER.) And they you stayed in China how long?

A. One year and eight months.

Q. And then where did you sail from in returning to this country?

A. I came back to Tacoma.

Q. From Hong Kong? A. Yes, sir.

Q. On what boat? A. On the "Victoria."

Q. What date did you leave Hong Kong?

A. It was in the eighth month, but I have forgotten the date.

Q. On what date did you arrive in Tacoma?

A. The ninth month.

Q. The ninth month of what year?

A. K. S. 23; 1897.

Q. Then you went back to China again in 1907?

A. Yes, sir.

Q. Where did you sail from at that time to China?

A. From San Francisco.

Q. Where did you land in China?

A. Hong Kong. [120]

Q. On what date did you sail from San Francisco?

A. It was the 7th day of the 11th month of that year.

Mr. BRAZIE.—That is December 10, 1907.

Q. (By Mr. SCHOONOVER.) And on what boat? A. The "Korea."

Q. And you remained in China how long at that time? A. Four years.

Q. And you got back to this country in 1911 or 1912? A. In 1911.

(Testimony of Yee Ying Dock.)

Q. Have you been in this business, as you say, of a Chinese druggist all the time since you returned to San Francisco the last time? A. No.

Q. What did you do before you went into this drug business? A. Laundry work.

Q. Who did you work for there?

A. Oh, I misunderstood. After I came back I became a storekeeper, but before that I was a laundryman.

Mr. McNAB.—Did he say he misunderstood?

The INTERPRETER.—"I misunderstood."

Q. (By Mr. SCHOONOVER.) During your stay in China from 1907 until 1911 did you visit the family of the defendant? A. Yes, sir.

Q. Who did you visit there—what members of the family. A. I saw him, his parents, his wife.

Q. Was the defendant himself there when you returned to this country in 1911?

A. No, he was not, but was over here.

Q. What ship did you return on at that time in 1911? A. The "Chiyo Maru."

Q. What was the date when you landed in San Francisco in 1911?

A. I arrived on the 25th day and landed on the 27th of the [121] seventh month. I arrived Saturday and landed Monday, as I remember it.

Mr. BRAZIE.—1911.

Q. (By Mr. SCHOONOVER.) What business were you in in Denver? A. Laundry work.

Q. Working for somebody else? A. Yes, sir.

Q. What business were you in in Tampa?

(Testimony of Yee Ying Dock.)

A. I was doing laundry work, one part, and then the other side I had some merchandise.

Q. Working for somebody else in Tampa?

A. No; I conducted a business myself.

Q. You had a laundry and mercantile business, then, in Tampa? A. Yes, sir.

Q. Whereabouts?

A. On Seventh Avenue, Between Fourteenth and Fifteenth Street.

Q. What number was your place on Seventh Avenue? A. I don't remember the number now.

Mr. SCHOONOVER.—That is all.

Mr. McNAB.—That is all. Those are all the witnesses we have present, your Honor. I understand the Government has some witnesses it would like to produce at this time. There is no objection.

Mr. SCHOONOVER.—All right; we have.

Mr. DOCKWEILER.—May it please the Court, in order to complete that opinion introduced by the Government and in which the defendant herein was denied the right to secure a certificate before leaving our country in March of last year, the circular referred to in the opinion ought to be a part—that is, ought to be read into the record or become a part of the record, because it is a part of the opinion, and if there is no objection, it is stipulated that the circular dated November 5, [122] 1913, of the Department of Labor, signed by A. Caminetti, Commissioner General, has been read into the record.

Mr. SCHOONOVER.—Yes.

Mr. DOCKWEILER.—In connection with the opinion that you introduced.

(Testimony of Yee Ying Dock.)

Mr. SCHOONOVER.—Yes. No objection to that.

The COURT.—All right. The reporter has the stipulation.

Mr. DOCKWEILER.—Your Honor will recollect that the defendant presented the certified copy of the proceedings before the Commissioner in Vermont, but did not present a transcript of the testimony, and evidently without a transcript of the testimony they would not regard the certified copy of the judgment as sufficient.

Mr. SCHOONOVER.—How is that?

Mr. DOCKWEILER.—To get that circular, the administrative officer passing upon the request of the defendant in March, 1914, would not regard the certified copy of the Commissioner's record and judgment unless there accompanied such certified copy a complete transcript of the testimony adduced before the Commissioner.

Mr. SCHOONOVER.—Then in that connection, if your Honor please, we offer a certified copy of the record before that Commissioner, certified to be complete, which shows that there is no transcript of any testimony included in it.

Mr. McNAB.—Does it differ in any respect from the one already in evidence?

Mr. SCHOONOVER.—Yes, it does.

Mr. McNAB.—In what respect?

Mr. SCHOONOVER.—Well, this is officially certified, and there are some minor differences; but not material.

Mr. McNAB.—Is the other one certified?

(Testimony of Yee Ying Dock.)

Mr. SCHOONOVER.—No, I don't think the other one is.

Mr. McNAB.—Yes, here is a certificate of George E. Johnson, **[123]** United States Commissioner, with a seal (handing paper to counsel).

Mr. SCHOONOVER.—The certified copy we are offering contains the docket entries as well as what appears in your certified copy.

Mr. McNAB.—Yours appears to be a certificate from the docket clerk of the district, certifying that these are certain docket entries—

Mr. DOCKWEILER.—Well, read the certificate.

Mr. McNAB.—The certificate seems to be as follows:

"I hereby certify that the foregoing is a true copy of the docket entries in the case of the United States vs. Yee Chung, as appears by the dockets of former U. S. Commissioner George E. Johnson, Jr., returned into court by him at the expiration of his term of office and now remaining at this office." I am only asking for information in what respect it is different.

Mr. SCHOONOVER.—Well, it is a certificate as to docket entries, and yours does not include the docket entries.

Mr. McNAB.—Well, is there any conflict between the two certificates?

Mr. SCHOONOVER.—Oh, I don't know; I don't care to pass upon that now.

Mr. McNAB.—Well, it is only for information, be-

(Testimony of Arthur Leigh Jolliffe.)

cause I cannot read it at this time.

The COURT.—All right; it will be admitted.

The CLERK.—It will be U. S. Exhibit 2. **[124]**

Testimony of Arthur Leigh Jolliffe, for Plaintiff.

ARTHUR LEIGH JOLLIFFE, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. SCHOONOVER.)

Q. What is your name?

A. Arthur Leigh Jolliffe.

Q. Where do you reside?

A. Vancouver, British Columbia.

Q. What is your occupation?

A. Dominion Immigration Agent and controller of Chinese Immigration.

Q. Of British Columbia?

A. For Vancouver, British Columbia.

Q. How long have you occupied that position?

A. For five months.

Q. How long have you been in the public service in Canada? A. For a year prior to that.

Q. In your present position I will ask you if you are custodian of the manifests showing the landing of passengers at the port of Vancouver, British Columbia, during the years 1907 and 1908 or portions of those years. A. I am.

Q. Have you such manifest with you?

A. Did you say 1907?

Q. 1897, I mean, and 1898.

(Testimony of Arthur Leigh Jolliffe.)

A. Yes. And I have those papers with me.

Q. Covering what period of time in those years?

A. From October, 1897, to January, 1898.

Q. And what date in those two months?

A. From the 20th of October, 1897, to the 12th day of January, 1898. **[125]**

Q. Does the manifest you have include the manifest showing the passengers landed?

Mr. McNAB.—Objected to as leading and suggestive.

The COURT.—The objection is overruled.

Mr. SCHOONOVER.—Well, I will withdraw it anyhow.

Q. Does it contain a manifest of the landings of the ship "Empress of Japan"?

A. Yes, on two occasions.

Q. And of what dates?

A. October 20, 1897, and January 12, 1898.

Q. Was there at that time, do you know, any boat known as the "Emperor of Japan"?

A. Not that I am aware of.

Mr. McNAB.—Now, is there any contention about that? Because throughout the immigration records at San Francisco, it is repeatedly stated by the immigration officials, notwithstanding that statement, that the defendant always stated "Empress of Japan." At least six times it is recited by the immigration officials that he stated "Empress of Japan." Now, is there any contention that that record is correct, the word "Emperor" in view of the fact that the immigration officials recite repeat-

(Testimony of Arthur Leigh Jolliffe.)

edly that he said "Empress"?

Mr. SCHOONOVER.—What is your theory?

Mr. McNAB.—I have no theory. I would like to know what yours is.

Mr. SCHOONOVER.—Is it your contention that the witness says "Empress" or "Emperor"?

Mr. McNAB.—We have no contention about it. There is your record. I would like to know what you are getting at.

The COURT.—Well, apparently he has said both, so both of you can reach such conclusions as you desire.

Mr. McNAB.—My contention being that notwithstanding on one occasion before the Commissioner he is reported to have said the word "Emperor," that all through these immigration officials' **[126]** records for years and years he is recited to have said "Empress," and they so state, and they check it up and prove the date and everything else.

Mr. SCHOONOVER.—Very well. We are willing to consider it the "Empress."

Mr. McNAB.—In this record here there seems to be several of those things about which there is some dispute.

Q. (By Mr. SCHOONOVER.) Those two dates are the only two dates in which the "Empress of Japan" landed at the port of British Columbia?

A. They are.

Q. You have the manifest, you say, with you, at this time? A. Yes, sir.

Q. What Chinese persons were landed from that

(Testimony of Arthur Leigh Jolliffe.)

boat October 20, 1897, as shown by the manifest?

A. Well, there were a number of them.

Q. How many, if the manifest discloses?

A. On the "Empress of Japan" in October, 1897?

Q. Yes, October 20.

A. There were 305 on that date.

Q. Among them were there any persons named Yee Chung? A. There were.

Q. How many? A. Two.

Q. What is the description as shown by the manifest of the two Yee Chungs?

Mr. McNAB.—Two Yee Chungs on October 20?

Mr. SCHOONOVER.—Yee Chungs.

Mr. DOCKWEILER.—I don't know, your Honor. If there is any record that they resire to introduce, after identification of the record the records could be introduced. The record speaks for itself. I don't know that it is proper for the *witness* [127] *testify* to what the record contains.

The COURT.—Well, it is a record of another government over which we have no control and no right to assume or attempt to control.

Mr. SCHOONOVER.—We do not want to keep it here. You can verify his statements from it.

Q. The question is, what is the description of the two Chinese Yee Chung, the name and description, that appears upon the manifest, landing there October 20, 1897?

A. Yee Chung, age 33; height, 5 feet 4; pit each corner of mouth; 5 pits left jaw. That is one of them that went through Canada to Mansonville.

(Testimony of Arthur Leigh Jolliffe.)

Q. (By Mr. DOCKWEILER.) Well, where did you find that statement? Where is Mansonville?

A. (Witness points.)

Q. (By the COURT.) Where is Mansonville?

A. Mansonville, Quebec (pointing).

Q. (By Mr. DOCKWEILER.) Have you ever been there? A. To Mansonville?

Q. Yes. A. No.

Q. How far is Mansonville from the city of Quebec, so far as you know?

A. Well, I couldn't give you that information.

Q. How far is it from Montreal?

A. Well, it is just three or four hours' run from Montreal, I think.

Q. What is it? A junction of what?

A. It is a port of exit, an immigration port of exit.

Q. A Canadian port of exit into the United States?

A. Yes.

Q. Near Montreal? [128] A. Yes.

Q. In other words, that is the Montreal *court* of exit to the United States?

A. No, Montreal is a port itself. An immigration port.

Q. Oh, that is the port by sea? A. Yes.

Q. But not by land?

A. No. This is one of the ports by land.

Q. (By Mr. SCHOONOVER.) What is the nativity of that Yee Chung shown by the manifest?

A. He is a merchant and his birth place is Sem Ning.

Q. What country?

(Testimony of Arthur Leigh Jolliffe.)

A. That would be China. The second one, Yee Chung, 38; height, 5 feet 1; merchant; scar on right eyebrow; scar on nose.

Q. What nativity?

A. It doesn't say. Manifested from Vancouver, British Columbia, to North Portal.

Q. Where is North Portal?

A. In the province of Saskatchewan, I think. It is one of the border ports.

Q. There is also an American port on the other side?

A. There is an American port called Portal, I think.

Q. In North Dakota, do you know?

A. Yes, I think it is.

Q. (By the COURT.) What were the ages of those two Chinese again?

A. The first one 33 and the second one 38.

Q. (By Mr. SCHOONOVER.) Now, I will ask you if there was any Yee Chung, or Chong, landed on January 12, 1898.

A. On that same boat, the "Empress of Japan"?

Q. Yes, the "Empress of Japan." **[129]**

A. No.

Q. How many Chinese do you say were landed at Vancouver on October 20, 1897, including the two Yee Chungs? A. Three hundred and five.

Q. (By Mr. McNAB.) How many on the second boat? A. One hundred and seventy-seven.

Mr. SCHOONOVER.—That is all.

(By Mr. McNAB.)

(Testimony of Arthur Leigh Jolliffe.)

Cross-examination.

Q. Your experience in the Dominion service relating to immigration dates back about one year and five months from the present time? A. Yes.

Q. Prior to that time, what were you engaged in doing?

Q. I was engaged in the railroad service, with the Canadian Pacific Railway.

Q. In what capacity? A. In a clerical capacity.

Q. Could you make it a little more specific than that?

A. I was chief clerk for the American superintendent on the Atlantic Division.

Q. Stationed where?

A. At Macadam Junction; headquarters was at Macadam Junction.

Q. That was in what part of the Dominion?

A. New Brunswick.

Q. That was on the extreme eastern coast?

A. Yes.

Q. Had you prior to the time you entered the Dominion service in the Immigration Department had any experience with Chinese? **[130]**

A. No.

Q. Had you prior to that time had any familiarity with Dominion methods in regard to the handling of immigrants? A. No.

Q. Since 1879, new regulations have been promulgated by the Dominion Government, have they not, relative to the incoming of aliens?

A. That I cannot answer.

(Testimony of Arthur Leigh Jolliffe.)

Q. You are not familiar with the regulations which govern the entry of aliens at the time you are now speaking of according to your record?

A. Other than the handling of manifestations, which is the same as at the present time.

Q. Well, you were not present in that part of the country at that time, were you? A. No.

Q. Do you know anything concerning the manner in which names are given to the ship companies at the port of departure in China, at Hong Kong, at that time? A. No.

Q. Do you know that at that time and until about ten years ago all tickets for Chinese passengers were delivered over to brokers who simply subscribed for the number that they thought they could sell, and they simply supplied names to the shipping companies up to the extent of the number that they were able to sell? Do you know that?

A. No, I do not.

Q. You don't know one way or the other concerning it? A. No.

Q. Now, have you been informed, or do you know, that the selling of these tickets up to the period of ten years ago when the regulations were changed by the Government—that up to that **[131]** time the tickets for Chinese passengers departing from Hong Kong were sold in the market like exchange, one day up and one day down, in accordance with the demand for tickets, and that the brokers simply gave in the allotted number of names to the vessel?

A. I didn't know that.

(Testimony of Arthur Leigh Jolliffe.)

Q. You have had no occasion, of course, have you, to familiarize yourself with matters relating to the selling of passages at the period fixed by these manifests?

A. No, other than referring to records within those dates.

Q. You yourself have no personal familiarity with the way in which the manifests were prepared aboard ship at the time these records were made?

A. Not the manifests prepared on board the ship. The manifests on arrival at the port.

Q. These manifests to which you now refer were made at what port?

A. Which manifests do you refer to?

Q. The ones you have presented here to-day.

A. The first manifest is prepared on the ship and the second one is prepared by the Canadian immigration officials.

Q. Is the second manifest prepared a copy from the one prepared on the ship?

A. No, it is not.

Q. By whom is the one prepared at the port of entry?

A. By the Canadian immigration authorities.

Q. At that time what staff had they for the purpose of preparing these—how large a staff?

A. I couldn't answer that question.

Q. Do you know how many men were required to handle these 305 Chinese?

A. How many men would be required?

Q. No, how many men were required—how many

(Testimony of Arthur Leigh Jolliffe.)

the Dominion [132] government had supplied for that purpose at that time?

A. How many had they supplied?

Q. Yes, how many were in active charge there at that time in handling these 305 Chinese that came in this one boat. A. That I could not answer.

Q. You don't know, of course, from whom the officer who prepared these manifests secured his information at that time?

A. He could only secure it from the man himself.

Q. Well, now, that is your opinion. I am saying, you don't know, do you—

The COURT.—It is very apparent that he did not, of course, because he was across the continent. He was not there, and could not know it.

Mr. McNAB.—Certainly.

Q. Now, Mr. Jolliffe, if you look over these manifests—I presume you have looked them all over—do you find anybody tht is not classed as either a merchant or a grocer or something like that status?

A. I couldn't answer without looking them over.

Q. Did you ever know one to give his business as a laborer? A. Oh, yes.

Q. At that time?

A. I was not in the service at that time.

Q. Well, you have examined the records: Is there any case here of a laborer? A. Any case there?

Q. Yes.

A. I couldn't answer without looking over the papers.

Q. Well, generally, among Chinese coming in,

(Testimony of Arthur Leigh Jolliffe.)

they give their status as merchants, do they not; that is the usual status given?

A. No, not necessarily.

Q. Have you ever found any mistakes in the records in regard to the description of Chinese?

A. No. **[133]**

Q. Have you ever had any occasion to investigate them? A. Yes.

Q. That is, since your time?

A. In my own time.

Q. You have had no occasion to go back to those older ones for the purpose of comparison?

A. For identification purposes.

Q. Oh, I presume for identification purposes, yes.

A. No, I never found it necessary.

Q. Have you for identification purposes?

A. No, I have never found it necessary. Not in the old time.

Q. You have never had occasion to go back to them at all? A. No.

Q. How much familiarity have you had with Chinese names, Mr. Jolliffe, since the time you went into the service?

A. Well, I have been familiar with them ever since I have been in the Canadian Immigration Service.

Q. Not before that time? A. No.

Q. Do Chinese ever, to your knowledge, have more than one name? A. Yes.

Q. Sometimes as many as three or four, do they not?

A. I couldn't answer that. Two I know of.

(Testimony of Arthur Leigh Jolliffe.)

Q. You know they have at least two names?

A. Yes.

Q. Do your records here put down all the names?

A. Those particular records that you are referring to?

Q. Yes.

A. I couldn't answer that question.

Q. Well, can you state that these names that are on these records are the true names of the persons who came in?

Mr. SCHOONOVER.—I object to that, your Honor. **[134]** It appearing that the witness, as suggested by the Court, was across the continent and—

The COURT.—Yes, it is apparent that he cannot.

Q. (By Mr. McNAB.) Can you swear that the name of any Chinese coming into your port and during your time is the name of the Chinese person described in your records?

Mr. SCHOONOVER.—I object to that as calling for a question of whether the Chinese are telling the truth about it, and his judgment about that is no better than anybody else's.

The COURT.—Yes, and it is apparent that he cannot do that.

Q. (By Mr. McNAB.) How many names of Chinese, when you discovered that the Chinese had several names, do you insert in your record?

A. How many—

Q. How many of the names do you insert in your records? A. Their complete names.

(Testimony of Arthur Leigh Jolliffe.)

Q. Six or seven, if they have them?

A. I have never found more than two sets of names.

Q. Do you, in examining these records, find where any Chinaman has been given more than one name?

A. I couldn't answer that without examining those records.

Q. I call your attention to the fact that these records and reports which you have presented here, page after page, list the incoming Chinese as grocers. On the first page that I have before me are probably fifteen and on the next page probably twenty-five, on the next twenty, on the next thirty, on the next twenty, on the next about ten, and so on. Did the Immigration Department make any investigation beyond the statements of the persons as to whether or not they were grocers?

Mr. SCHOONOVER.—I object to that because it goes back to that date upon which the witness cannot know anything and does not claim to know.

The COURT.—The objection is sustained. **[135]**

Q. (By Mr. McNAB.) Then as I understand it, the extent of your testimony is that these are records which are found in your office, and you do not know anything about how they were prepared except your knowledge of how you now prepare these?

A. I only know that those are the official Canadian records of the arrival of Chinese between those dates.

Q. And you do not, of course, pretend to say whether or not there were Chinese aboard who are

(Testimony of Arthur Leigh Jolliffe.)

not in that record or whether there are Chinese misdescribed.

The COURT.—He cannot purport to say, and therefore will not attempt it.

Q. (By Mr. McNAB.) Who owns the "Empress of Japan"? A. At the present time?

Q. No; who owned her in 1897?

A. The Canadian Pacific Railway, as far as I know.

Q. Have you any familiarity with the method by which tickets were issued to Chinese at the port of Hong Kong at that time, the port of the Canadian Pacific Railway Company's ships? A. No.

Q. Have you ever received any information or have you ever been told, as a matter of fact, how they were issued at that time? A. No.

Q. Let us see if I have the figures correctly: 305 Chinese came in on board the "Empress of Japan" on October 20; 177 came in on January 12.

A. I think that is what I said.

Q. What other vessels of the Canadian Pacific fleet came in between October 20 and January 12?

A. From these records, if my memory serves me right, the first was the "Empress of Japan," October 20th; then the "Empress of China," then the "Empress of India," and then the "Empress of Japan" again. Those were the three boats of the fleet. [136]

Q. And the "Empress of China" and the "Empress of India" came in what order, do you remember?

(Testimony of Arthur Leigh Jolliffe.)

A. Well, I couldn't tell you without reference to those records. (Examining records.) The "Empress of China" arrived on the 17th of November, 1897, and the "Empress of India" on December 15, 1897, and the "Empress of Japan" again on the 12th of January, 1898. That is the order of them.

Mr. McNAB.—I would like to ask the other side if it will admit without the necessity, of course, of keeping these records here, because they are the property of a foreign government, that there are numerous individuals named in these lists of Chinese of the same age of the defendant. I am asking this for the purpose of—

The COURT.—Well, pass them up and I will take a look at them. If the facts can be adduced from an inspection I will have the benefit of it.

Mr. McNAB.—Your Honor will notice a number of them there at 17 and 18 years of age.

(The Court examines records.)

The COURT.—Did this defendant have or give any other name here in this connection?

Mr. McNAB.—He did, your Honor. I have forgotten what it was.

The COURT.—What does the record show?

Mr. SCHOONOVER.—No other name, only a marriage name, and I don't know that he did that.

Mr. McNAB.—I think the record before the Bureau shows several others besides.

Mr. SCHOONOVER.—No, it does not.

Mr. McNAB.—Very well, if it does not, it does not. But I would like to have the record here. Have you examined it? [137]

(Testimony of Arthur Leigh Jolliffe.)

Mr. SCHOONOVER.—I am informed that it does not. I mean this record here. He only gives one name here.

Mr. McNAB.—Before the Commissioner he was not asked concerning his other name.

Mr. SCHOONOVER.—It appears throughout that he signs his name Yee Chong at all times.

Q. (By Mr. DOCKWEILER.) Have you any record containing the original signatures of the passengers on board any of these vessels touching at Vancouver during the fall of 1897?

A. Not of passengers manifested through to foreign ports. Canadian Chinese, yes.

Q. (By Mr. McNAB.) At that time?

A. At that time.

Q. Are they here? A. No.

Q. Do you know if there is extant any record of the signatures of the passengers on board any of the Canadian Pacific liners touching at Vancouver, in the fall of 1897, other than Chinese intending to disembark and remain in Canada?

A. No, there would be no signature in the Canadian office other than those in Canada.

Q. (By the COURT.) Do I understand from that that there are other Chinese who came on these vessels destined for Canadian ports whose names do not appear on these manifests?

A. Yes, on these manifests they would not appear, the Canadian Chinese, not on these manifests, but on the ship's manifest they would appear.

Q. (By Mr. DOCKWEILER.) What is meant

(Testimony of Arthur Leigh Jolliffe.)

by the term "grocer," if you know, as used in the fall of 1897? I see practically all of these Chinamen on the ship's manifest are referred to as "grocers," that is, as having the occupation of "grocers." What was then intended by the use of that term, if you know? [138] A. I can't answer that question.

Q. (By Mr. McNAB.) Even down to the age of 15 here they are listed as "grocers." Do you know what significance that had in the Dominion at that time? A. No.

Q. (By Mr. DOCKWEILER.) I count, Mr. Witness, on this ship's manifest for the voyage of the "Empress of Japan" dated October 20, 1897, that among the 341 men there are only eleven listed as laborers, one as a missionary, if I remember, and the balance all as grocers, with the exception, as I see here, of two tailors and two washermen. All the balance were grocers. A. (No answer.)

Q. (By Mr. McNAB.) The ship's manifest at that time did not give the age, did it?

A. No, I don't think it did. In fact, I am practically sure it did not.

Q. I find no age on any of these records.

A. No.

Mr. SCHOONOVER.—May I inquire? These references you have been making, Mr. Dockweiler, are to the ship's manifest?

Mr. DOCKWEILER.—Yes.

Q. (By Mr. McNAB.) You spoke of one of these parties being routed through to Mansonville. You did not mean by that that his ticket read to Mansonville? A. No.

(Testimony of Arthur Leigh Jolliffe.)

Q. His ticket might have read to Boston?

A. His ticket did read to Boston.

Q. Do you know whether at that time, either through custom or otherwise, a Chinese passenger was required to write his name at the port of entry?

A. The Canadian passengers certainly were. [139]

Q. Well, the Canadian Chinese?

A. Yes, the Canadian Chinese.

Q. But not any Chinese passing on into other countries? A. No, I think not.

Q. How did you get the names—simply by asking them?

A. Yes. They were taken in examination the same as they are to-day, I understand.

Q. And those names are written into English simply by sound? A. Through a Chinese interpreter.

Q. Well, the only way, is it not, of putting a Chinese name into English is by sound?

A. That is the only way.

Q. And the spelling of those names, as you know, as a matter of fact, varies? One person may get the sound spelled one way and another may get it spelled another way? A. It varies but very slightly.

Mr. DOCKWEILER.—Here is the record in the case of this man who just left the witness-stand, Dock. Now, the interpreter gave it "Dock"; it is "Ark." But there is no doubt but that he was the same man that testified before the Commissioner.

The COURT.—He gave the date of his landing in

(Testimony of Arthur Leigh Jolliffe.)

Vancouver as November or December, 1897, as I remember now.

Mr. SCHOONOVER.—I think that is right. The twelfth month covers from some day in December to some day in January, does it not?

Q. (By Mr. McNAB.) They are all "Empresses," are they not?

A. All those three are "Empresses," yes, sir.

Q. Which one of them landed during October and prior to the 20th?

A. Well, it is not likely that there would be any in October prior to that one. They run about once a month. They used to run about once a month.

Q. At that time did the Canadian Pacific run other vessels of [140] her fleet to the Orient?

A. I think not.

Q. (By Mr. SCHOONOVER.) Does she now?

A. Yes.

Q. What boat?

A. The "Mongol" and the "Empress of Russia" and the "Empress of Asia." They are the last boat or two new boats, only one running for about a year.

The COURT.—It is apparent from these manifests that a number of individuals ranging from 16 to 17 or 18 entered this port at this time, none of them, however, by the name Yee Chung.

Mr. McNAB.—That fact, as stated by the Court, will be admitted, will it, gentlemen?

Mr. SCHOONOVER.—Certainly.

Q. (By Mr. SCHOONOVER.) I understood you to say on cross-examination that these manifests are

(Testimony of Arthur Leigh Jolliffe.)

kept as the manifests are kept at present and during your occupancy of the position that you now hold.

A. Yes.

Q. And they are part of the same file, a continuous file of manifests, are they? A. Yes.

Q. From the dates of these manifests up till the present day? A. Yes.

Q. (By Mr. McNAB.) You did not see that those were kept in the same manner that you now keep them?

Mr. SCHOONOVER.—I didn't ask him if they were.

Mr. McNAB.—I so understood you.

Q. You did not mean to testify that they were kept in the same strict manner that you now keep yours?

Mr. SCHOONOVER.—He says these are kept as those were kept, in the same form. [141]

A. That is my understanding of the question, that the manifests at the present time are kept in the same form as those manifests—exactly the same.

Q. That is, that the ruling of the paper and the lines and the information displayed upon the face of the paper is the same? A. Why, certainly.

Q. You are not testifying to anything in regard to the manner, of course, in which the administration was carried on? A. No.

Mr. SCHOONOVER.—That is all. It is understood that this witness will not be recalled, gentlemen, is it?

Mr. DOCKWEILER.—Well, now, some mysterious matters might develop. Of course we do not

know. We have never seen these papers, your Honor, until the witness was placed on the stand, and they have turned them over to us. Now, they are large and bulky, and contain many sheets, and there might be something develop on a critical examination thereof that might necessitate further cross-examination. We do not want to excuse the witness at this moment.

Mr. SCHOONOVER.—How long will it take to make the critical examination?

Mr. DOCKWEILER.—Mr. McNab will run the papers over this evening, and possibly he can answer before the clerk or answer before you and then we will put down his questions. We will do everything that we can to accommodate the Government and enable our Canadian friend to return home.

The COURT.—Of course, if there is any necessity for further examination and you determine upon that we will proceed with the case; if not we will adjourn it over; because we cannot afford to have this gentleman brought back.

Mr. DOCKWEILER.—Oh, no; but in case we want to examine him on some matters we can have him answer before the District Attorney, [142] for instance, and we will put his answers down.

Mr. SCHOONOVER.—Then he may be excused as a witness?

Mr. DOCKWEILER.—We may not desire to ask him a single other question, but we do not know.

Mr. SCHOONOVER.—What we do stipulate is that we will get together and ask the witness a ques-

(Testimony of Charles D. Mayer.)

tion and write his answers down and have them go in the record as what he has testified to.

Mr. DOCKWEILER.—Yes.

The COURT.—The understanding is that he will remain subject to your call this afternoon, then. That is agreeable to you, Mr. Jolliffe, is it?

The WITNESS.—Yes.

Mr. McNAB.—Yes. [143]

Testimony of Charles D. Mayer, for Plaintiff.

CHARLES D. MAYER, a witness called on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. SCHOONOVER.)

Q. Please state your name.

A. Charles D. Mayer.

Q. Where do you reside?

A. San Francisco—or Oakland—or Berkeley.

Q. What is your business?

A. I am an immigrant inspector stationed at San Francisco.

Q. In the service of the United States Government. A. Yes, sir.

Q. How long have you been in that service?

A. I have been in the Immigration Service for the last past eleven years.

Q. What particular service are you performing at this time?

A. I am the inspector in charge of the law section of the Immigration Service at San Francisco.

Q. And you have occupied that position how long?

(Testimony of Charles D. Mayer.)

A. Why, virtually for two or three years, and I was subordinate officer before that.

Q. Were you ever at any time in the Immigration Service of the United States at Burlington, Vermont?

A. I was stationed in the New England district in which Burlington is situated.

Q. Were you acquainted with George E. Johnson, United States Commissioner for the District of Vermont, during the time that he acted as such Commissioner? A. Yes.

Q. And did you know Commissioner George E. Johnson? A. From about 1904 until 1907. [144]

Q. Where was he stationed?

A. At Burlington.

Q. What kind of a looking man was Mr. George E. Johnson, commissioner at Burlington, Vermont, at the time you knew him there?

A. Well, he was a man I should say of about 65 years of age, a small man, weighing I don't think more than 135 pounds at that time, and he showed a declining physical condition, that is, he seemed to be shrinking physically, and he gave the appearance of being a rather undersize man.

Q. What was his height?

A. Well, about 5 feet 6, I should say. That is my general impression. Possibly 5 feet 7 if he stood straight.

Q. You were acquainted with him and had official business with him, did you?

A. Oh, yes, frequently.

(Testimony of Charles D. Mayer.)

Q. Where was his office in Burlington at the time you were familiar with him?

A. In the Federal Building there, which was the custom-house.

Q. Where was that located with reference to the railroad station in Burlington, from the Montreal Railroad by which you reached Vermont from Montreal, Canada?

A. Oh, it was practically a mile distant; nearly a mile anyway.

Q. Where was the place of detention of Chinese held for investigation in Burlington at that time?

Mr. DOCKWEILER.—What time does he refer to—1904?

Mr. SCHOONOVER.—He has given the dates.

A. When I was there they were detained in the jail.

Q. (By Mr. SCHOONOVER.) What date was that? A. About 1904 until 1907.

Q. (By Mr. DOCKWEILER.) Do you know where they were detained in 1897, in December, or in January, 1898? [145]

A. No, I do not, of my own knowledge.

Q. (By Mr. SCHOONOVER.) At the time you knew they were detained in jail was the jail they were detained in the only jail there in Burlington?

Mr. McNAB.—Maybe Mr. Mayer has not been in all the jails.

A. Well, I must confess that I never was in any jail in Burlington, and I never really saw a Chinaman—I don't really know where they kept their

(Testimony of Charles D. Mayer.)

Chinamen except from information.

Mr. SCHOONOVER.—That is all.

Cross-examination.

Q. (By Mr. DOCKWEILER.) How did you pronounce your name—Mayer? A. Yes, sir.

Q. Did you ever hear it pronounced Meyer?

A. Yes, sir.

Q. You are the same gentleman who prepared that report that is in evidence here with reference to the admission of the defendant Yee Chung?

Mr. SCHOONOVER.—How is that?

Mr. DOCKWEILER.—There is a report that is in evidence, one of our exhibits, respecting the defendant Yee Chung, in which Mr. Mayer discusses the question of the Vermont record.

Mr. SCHOONOVER.—I object to interrogating him upon that question.

Mr. McNAB.—He is simply asking him if he is the same Mr. Mayer.

Mr. SCHOONOVER.—All right.

Q. (By Mr. DOCKWEILER.) You are the same person, are you? A. Yes, sir.

Q. Now, Mr. Mayer, you testified before the Commissioner in this case? A. I did.

Q. Was this question put to you, that is, before the Commissioner: "What was his physical appearance?" referring to the Commissioner [146] George E. Johnson, and did you answer that question as follows: "He was an elderly—I will state it in this way. I first became acquainted with him in either 1904 or 1905. He was then a man at least 60 years

(Testimony of Charles D. Mayer.)

of age and was a small man physically." Did you so answer? A. I think so.

Q. Well, in answering the Government's question as to his age you have just stated on your direct examination that Johnson's age was 65.

A. Oh, I don't know: I simply estimate.

Q. Well, now, which do you think would be the more correct estimate—the estimate of 65 as now given, this day, or the estimate of 60 years as given in the examination of the defendant before Commissioner Williams?

Mr. SCHOONOVER.—I object to the question, your Honor, on the ground that it does not correctly state what the witness testified to as before the Commissioner as just read by counsel himself, because, as read by counsel himself, the witness said before the Commissioner that the person was at least 60 years of age and not 60 years of age.

Mr. DOCKWEILER.—I read the question in that way.

Mr. SCHOONOVER.—You are not putting it to him in that way; you are asking him as to whether his estimate of 60 then or 65 now is correct.

Mr. DOCKWEILER.—I am putting these questions just to illustrate—

Mr. SCHOONOVER.—I want you to put them fairly, whatever the purpose is.

Mr. DOCKWEILER.—This is not for impeachment. I just want to illustrate how easy it is for most of us, including Mr. Mayer,—for whom I have the highest respect,—and we are willing to stipulate

(Testimony of Charles D. Mayer.)

that every word Mr. Mayer has stated is the truth as he sees it— **[147]**

Mr. SCHOONOVER.—Well, that is presumed, without your stipulation.

(Last question read.)

The COURT.—Well, it is not exactly accurate, apparently. Reframe the question so as to include all the elements incorporated in the original answer.

Mr. DOCKWEILER.—Now put the same question, Mr. Reporter, except use the words "at least 60 years" instead of "60."

Mr. SCHOONOVER.—Now I submit there is no conflict between the two statements.

The COURT.—Yes. The objection is sustained.

Q. (By Mr. DOCKWEILER.) Now, you also, in giving an accurate description of Commissioner Johnson, made this answer on page 9, middle of the page: "He was a man, I should say, about 5 feet 6 or 7 inches in height, was inclined to be stooped, and was light in build, probably not weighing more than 130 or 135 pounds during the period that I knew him from 1904 or 1905 until about 1907." Now you have just a little while ago stated that the weight of Mr. Johnson was 155 pounds. A. If I so stated—

Mr. SCHOONOVER.—No, he didn't say so.

Mr. McNAB.—No, it was 135.

Mr. DOCKWEILER.—Was it? Well, I have no further questions on that line, then.

Q. How often did you see the Mr. Johnson referred to?

A. I was in his office once every day for two weeks

(Testimony of Charles D. Mayer.)

at least, and another occasion I would go there, oh, maybe a dozen times a year.

Q. (By Mr. McNAB.) Did you know the District Attorney at the time Mr. Johnson was Commissioner? A. Yes.

Q. Senger, his name was?

A. Well, I didn't know Mr. Senger, no. I knew the District Attorney in 1904. [148]

Q. But in 1907 did you know the District Attorney? A. No.

Q. Did you ever see him? A. No.

Q. You don't know whether he was an old man or a young man? A. I don't know.

Q. Did you ever attend court in Mr. Johnson's courtroom?

A. I never had occasion for Mr. Johnson; but I have been in his office when he has heard cases, not Chinese cases; just happened to be there.

Q. Did he sit up on a desk or just on the floor behind a table?

A. Well, he sat at his desk at his office when I heard him.

Q. An elevated desk or just on the floor?

A. I think it was a roll-top desk. I don't remember.

Q. Did you know Mr. Foster, the attorney who is reported by the proceedings in this case to have been present? A. No, sir.

Q. Don't know anything about his size? A. No.

Q. And at the time that you knew the place Chinese persons under detention and for examination

(Testimony of Charles D. Mayer.)

were detained in jail or lockup in Burlington?

A. That was my understanding.

Mr. DOCKWEILER.—That is all.

Q. (By Mr. SCHOONOVER.) Did you say that Mr. Johnson, in hearing the cases you were present when he did hear at Burlington, Vermont, sat on any elevated platform or not? A. I think not.

Q. (By Mr. McNAB.) And at the time you wrote your report recommending as to the landing of these persons, including the defendant here, and his description, you had all these things in mind, your knowledge of Mr. Johnson and what you had seen, etc.? A. Yes, I did.

Mr. McNAB.—That is all.

Mr. SCHOONOVER.—That is all. [149]

Testimony of Charles N. Williams, for Plaintiff.

CHARLES N. WILLIAMS, a witness called on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. SCHOONOVER.)

Mr. McNAB.—I suppose it will be stipulated by the Government that Commissioner Johnson is dead; that he died about 1907?

Mr. SCHOONOVER.—I think it appears in the correspondence that you put in evidence.

The COURT.—Yes, it is in somewhere. I have been apprised of it from some source.

Q. (By Mr. SCHOONOVER.) You are the Commissioner before whom the case of the United States

(Testimony of Charles N. Williams.)

of America vs. Yee Chung, being your Commissioner's number 467, was heard here in this courtroom, are you not? A. I am.

Q. I call your attention to a photograph on the back of the first page of—two pages within a wrapper here, upon which wrapper is indorsed Government's Exhibit 1, Charles N. Williams, U. S. Commissioner, and ask you if that is the photograph which was exhibited to the defendant in this case at the time of that hearing before you (exhibiting papers).

A. I cannot recall now the particular photograph. I recall that there was a photograph which was attached to a paper purporting to be his father's—I think in connection with his father's going to China, and the photograph was supposed to be the photograph of the father. I remember such a photograph being called to my attention during the hearing.

Q. And but one photograph?

A. And but one photograph. [150]

Q. And you indorsed the exhibit there as appears upon it, did you? A. I did.

Q. To which your attention has been called?

A. I did.

Mr. SCHOONOVER.—That is all.

Cross-examination.

(By Mr. McNAB.)

Q. Did you examine the photograph at the time?

A. Yes, sir.

Q. You would not be able to swear by looking at it, positively, one way or the other, whether it is or is

(Testimony of Charles N. Williams.)

not the same photograph, would you?

A. Not from a recollection of the photograph itself, no.

Mr. McNAB.—That is all.

Mr. SCHOONOVER.—That is all. That is the Government's case for the present. That is all we have at this time.

Mr. McNAB.—That seems to conclude the evidence for the day, your Honor.

Mr. DOCKWEILER.—You haven't any further testimony to offer, Mr. Schoonover?

Mr. SCHOONOVER.—Not that I know of at this time. I will reserve the right to offer any that may be in order later.

Mr. DOCKWEILER.—Oh, certainly.

The COURT.—Well, pursuant to stipulation and understanding heretofore entered into, then, we will adjourn the hearing at this time for the purpose of taking the depositions of certain witnesses for the defendant at San Francisco, the case to be set down for further hearing at the earliest opportunity at the convenience of counsel on five days' notice, with the right reserved by either side to produce further evidence at the time [151] of the further hearing as they may be advised. That is the understanding, gentlemen.

Mr. DOCKWEILER.—Yes, your Honor.

Mr. SCHOONOVER.—Yes.

The COURT.—All right.

Mr. DOCKWEILER.—How soon may we proceed to take the depositions?

The COURT.—If it will be of any advantage to you gentlemen, I am going to San Francisco and will arrange to be present at this examination.

Mr. DOCKWEILER.—Yes, your Honor, we do desire it.

Mr. SCHOONOVER.—It is desirable.

The COURT.—Then we will take the depositions on Thursday morning, the 22d of April.

(The hearing herein was thereupon adjourned to be resumed at San Francisco, California, on April 22, 1915.) [152]

John L. McNab, Esq.

In the District Court of the United States, for the Southern District of California, Southern Division.

Before Hon. BENJAMIN F. BLEDSOE, Judge.

No. ——.

Vol. ——.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

YEE CHUNG,

Defendant.

Reporter's Transcript.

Saturday, April 24, 1915.

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Filed Mar. 23, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [153]

In the District Court of the United States in and for the Southern District of California, Southern Division.

Before Hon. BENJAMIN F. BLEDSOE.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

YEE CHUNG,
Defendant.

San Francisco, California, Saturday, April 24, 1915.

Counsel Appearing:

A. SCHOONOVER, Esq., for the United States;

JOHN L. McNAB, Esq., and TIMOTHY HEALY, Esq., for the Defendant.

Mr. McNAB.—If your Honor please, I have just spoken to Mr. Schoonover and asked his courtesy in this matter, and I submit this to your Honor: when we went to Los Angeles in this case we did not know half as much about it as we learned while we were there, and we had not exhausted our search for witnesses as we did when we came back. The two witnesses whom we mention in our affidavit are here, but we have succeeded in locating two other witnesses, one who has been in the employ of the Commissioner of Immigration for the last 25 years, and another the head of a large firm in Chinatown. Their testimony would be very brief; in fact, I believe the testimony of all of them will be very brief. I think I can conclude them all in an hour. I would ask whether or not there would be any objection to my taking the testimony of these witnesses while your Honor is here. [154]

The COURT.—None, so far as the Court is concerned, Mr. McNab. The understanding was that we would come up here to take the depositions of the witnesses who were unable to attend in Los Angeles; but the Court is willing to accommodate you in that regard.

Mr. SCHOONOVER.—And I certainly am.

Mr. McNAB.—There is one other matter that I should like to apply for. One of the witnesses is a former Assistant Commissioner of Immigration, Mr. Edsell, who is now residing in San Francisco. The particular point that I want to call Mr. Edsell for is this: some manifests were introduced in the trial at Los Angeles of the ships coming in from China; we had no evidence there on either side as to the custom which was followed in the making up of these manifests other than the custom at the present time. Mr. Edsell is the man who has had experience with thousands of them; he expresses a disinclination to appear voluntarily and testify, but he says that if a subpoena is served on him, of course he will come. May I ask for the issuance of a subpoena for him to appear?

The COURT.—Any objection to that, Mr. Schoonover?

Mr. SCHOONOVER.—No.

The COURT.—It will be so ordered. I suppose, gentlemen, that there had better be some stipulation here with respect to this testimony.

Mr. SCHOONOVER.—Of course, the defendant expects to use this testimony, and we will stipulate upon the resumption of the hearing in the jurisdiction that it may be introduced. I do not think any stipulation at this time is necessary. No matter how it is got into the transcript, we will stipulate that it may be introduced. [155]

Deposition of Wong Chung, for Defendant.

WONG CHUNG, called for the defendant, sworn and examined through the Interpreter, Elmer Jones, who was duly sworn, testified as follows:

Mr. McNAB.—Q. Where were you born?

A. San Francisco.

Q. In what year?

A. In the sixth year of Hong Gee.

Q. Can you give us that date, Mr. Interpreter?

The INTERPRETER.—No, I cannot just now; I can get it later.

Mr. McNAB.—I think that is 1867 in our American calendar. I will proceed without reference to dates until the Interpreter gets that.

Q. What business was your father in?

A. He ran a drug-store.

Q. What is your business or work?

A. I am a cook.

Q. Cook for whom? A. John Backus.

Q. The Commissioner of Immigration?

A. Yes.

Q. The Commissioner of Immigration at the port of San Francisco? A. Yes.

Q. How many years have you been in General Backus' home?

A. I have been there about 25 years, with General Backus all the time.

Q. Have you worked any place else for the last 25 years? A. No, I never worked in any place else.

Q. When did you first go to China?

A. Kwong Sue 6th year.

(Deposition of Wong Chung.)

The INTERPRETER.—That is 1880.

Mr. McNAB.—Q. How old were you then?

A. About 13.

Q. How long did you stay in China?

A. I stayed for about 10 years, a little more.

Q. Before you went to China did you know Yee Kim Sing, a Chinese merchant in San Francisco?

A. Yes, I knew him.

Q. What business was he in in San Francisco?

A. He was in the general merchandise business.

[156]

Q. At what place? A. On Sacramento Street.

Q. Did you know Yee Kim Sing when you left for China? A. Yes, I did.

Q. Where was Yee Kim Sing at the time you went to China? A. He was at Quong Wah Chungs.

Q. That is a firm in Chinatown? A. Yes.

Q. Do you know whether Yee Kim Sing had any son at the time you left for China?

A. Yes, he had one son.

Q. After you got to China did you see Yee Kim Sing, and if so how long after you arrived there?

A. After I had been in China about a year or so I saw him.

Q. Did he come on from the United States?

A. Yes.

Q. Who did he have with him?

A. With his father and mother.

Q. Did you see any baby with them?

A. Yes, I saw his son.

Q. About how old was this son?

(Deposition of Wong Chung.)

A. About two years old.

Q. Where were your folks in China living with respect to the place that Yee Kim Sing and his wife and baby were living?

A. About 3 Chinese miles; approximately one English mile.

Q. Did you visit between yourselves? A. Yes.

Q. About how often? A. Several times a year.

Q. Were the relations between your two families close or otherwise; that is, was there any relation between the families?

A. Yes. The mother of this boy was the same surname as my father.

Q. What did they call the mother?

A. Wong Shee.

Q. What did they call the father?

A. Kim Sing.

Q. Who did he say had the same surname?

The INTERPRETER.—He said the same surname as his father.

Q. What is your father's surname?

A. Wong Quock Sim.

Q. Were you relatives of this family or only distant clansmen?

A. Only the same surname, not close relatives. [157]

Q. Were you taught to call Yee Kim Sing's mother by any particular name? A. I called her my aunt.

Q. What year did you leave China to come back to the United States?

(Deposition of Wong Chung.)

A. It was in the last part of the 15th year of Kwong Sue. (1889.)

Q. How old was this baby of Yee Kim Sings at that time? A. About 10 years old.

Q. What was his name? A. Yee Chung.

Q. Did you see Yee Chung, that is, the man in this case? A. In China?

Q. No, here?

A. I saw him when he was a boy, a few months old; I saw him after he had been born a few days.

Q. Then you saw him in China? A. Yes.

Q. He was about 10 years old you say when you left China? A. Yes.

Q. Have you seen him in this country since that time? A. No; I have never seen him since.

Q. You say his name was Yee Chung? A. Yes.

Q. Did you return to China again after you came back here again in 1889? A. Yes.

Q. When? A. Kwong Sue 25th year (1889).

Q. How long did you stay there?

A. Over a year.

Q. Who did you see in China when you were there? Did you see Yee Kim Sing? A. Yes.

Q. Did you see Yee Chung? A. No.

Q. Did you see Yee Chung's wife? A. Yes.

Q. How many children did she have?

A. I saw one just able to walk and one a few months old.

Q. Boys or girls? A. Boys.

Q. When did you come back to the United States?

A. The 25th year of Kwong Sue.

(Deposition of Wong Chung.)

Mr. SCHOONOVER.—That is the same year he went? A. Yes. [158]

Mr. McNAB.—Q. When did you go back to China again?

A. I went back in the 32d year of Kwong Sue and the 34th year I came back here to the United States.

Q. What year did you go back to China?

A. The 32d year of Kwong Sue (1906).

Q. Are you sure it is 1906? A. Yes.

Q. On what boat? A. The "Siberia."

Q. When did you return?

A. The 34th year of Kwong Sue (1908).

Q. On any one of those trips when you were there did you see Yee Chung? That is, did Yee Chung come on from the United States or anywhere else?

A. Yes. The last time when I went back I saw Yee Chung.

Q. What was the last time when you went back to China?

A. That was the 32d year of Kwong Sue I went back there, and I saw him some time in the 33d year of Kwong Sue.

Q. What I am trying to get at is, how long had you been in China before Yee Chung arrived?

A. About two months.

Q. Where did he come from?

A. From America.

Q. Now, I do not think the witness understood me, Mr. Interpreter: Have you seen Yee Chung in this country after you came back from China—did you see Yee Chung in this country after you came back

(Deposition of Wong Chung.)

from China? A. Yes.

Q. How often? A. Many times.

Q. Now, is this Yee Chung the defendant in this case the same man that you saw in China when you left there when he was about 10 years of age?

A. Yes.

The COURT.—Is Yee Chung in court this morning?

Mr. McNAB.—No, he is in Los Angeles. I thought he was to be here.

The COURT.—Have you a picture of Yee Chung here?

Mr. McNAB.—Yes. **[159]**

A. Yes. He used to come to see me from Pittsburg.

Q. Are you still in the household of General Backus? A. Yes.

Q. And have been there with him about 25 years?

A. Yes.

Q. You are his domestic cook? A. Yes.

Cross-examination.

Mr. SCHOONOVER.—Q. Is General Backus the only person you have worked for in this country?

A. Yes.

Q. When did you begin to work for him?

A. The 16th year of Kwong Sue (1890).

Q. How old were you when you first saw this baby you have testified about, who was just in his mother's arms, as you say? A. 13 years old.

Q. Where were you living then?

A. I lived on the corner of Clay Street and Dupont

(Deposition of Wong Chung.)

Street, in San Francisco Chinatown.

Q. Where did you see the baby?

A. I went to see him at his mother's house.

Q. Where was that house?

A. Upstairs over the firm of Quong Wah Chong.

Q. What number and street?

A. 728 Sacramento Street.

Q. How far are these two points apart, where you lived and where you saw the baby?

A. Over a block.

Q. How long had the father and mother of this baby, as you say, lived where they lived at the time you saw the baby, to your knowledge?

A. They had lived there since the child was born.

Q. How long do you know that they lived there before the child was born? A. Several years.

Q. About how many?

A. I could not tell you exactly how many years; I know it was several years.

Q. How many years had you lived where you lived when you went to see the baby before that time?

A. All the time; I lived there with my parents. [160]

The COURT.—Suppose you show that to him.

Mr. McNAB.—I now show to the witness, if your Honor please, the picture of Yee Chung, as it appears on the upper lefthand margin of the duplicate affidavit of Yee Chung in the matter of the identification of Yee Wah, minor son of a citizen of the United States. He is one of the sons that was admitted, Mr. Schoonover, whom we discussed in Los Angeles.

(Deposition of Wong Chung.)

Mr. SCHOONOVER.—I remember that.

Mr. McNAB.—Q. Now I show you this photograph and ask you whether or not that is the Yee Chung that you refer to (showing)? A. Yes.

Mr. SCHOONOVER.—Q. What is the date of the affidavit?

Mr. McNAB.—The 28th of September, 1910.

Mr. SCHOONOVER.—And that photograph was taken at what time with reference to that?

Mr. McNAB.—It must have been taken at that date. I ask that it be marked Defendant's Exhibit "A" at San Francisco.

(The photograph is marked "Defendant's Exhibit 'A' at San Francisco.")

Q. Is this man whom you identify as Yee Chung the same boy whom you left in China and who you say was about 10 years old at that time? A. Yes.

Q. About how often have you seen him in this country? A. Very many times.

Q. Do you know where he has been living in the last few years?

A. Bootchy Wooky—the name of some town. Since he came back from China he went there to live.

The INTERPRETER.—It is some small town.

Q. Do you know the name of the state?

A. I don't know the name of the state.

Q. Do you know a city that is in English called Pittsburg? [161]

Q. Is that the place where you were born?

A. Yes.

(Deposition of Wong Chung.)

Q. You have been to China all told how many times? A. Three times.

Q. How long were you over there the first time?

A. The first time over ten years.

Q. How long the second time?

A. Over a year.

Q. And the last time? A. Almost two years.

Q. Is that a thickly settled country, are there lots of Chinese in the neighborhood where you say you saw Yee Chung, the man whose photograph you have identified?

A. There is a village there—a Chinese village.

Q. Did you live in one village and was the place where you saw him a different village?

A. Not the same village; my village was about one English mile distant.

Q. How many people lived in that village you lived in? A. Over 100 counting women and children.

Q. What is the name of that village?

A. Ng Hntong.

Q. How old was this baby Yee *Chung you* started to China the first time?

A. About 5 or 6 months old.

Q. How long was it before you saw it again?

A. About a year or over a year after that; then I saw his father and mother.

Q. Where did you see the baby at that time?

A. I went to his village and to his house.

Q. This surname that the mother of Yee Chung and the surname that your father bore is the name of a Chinese clan, isn't it? A. Yes.

(Deposition of Wong Chung.)

Q. And includes a great many thousands of Chinese?

A. Yes, several tens thousands of them.

Q. When was it you next saw this Yee Chung after he was a couple of years old when you saw him in China?

A. He was about 10 years old when I saw him. [162]

Q. Where was that you saw him?

A. At his house.

Q. Where was that? A. At his village.

Q. In China? A. Yes.

Q. Then you next saw him when?

A. Then I saw him in the 1st year of Shun Ning here in America (1909).

Q. Where did you see him?

A. In the store of Quong Ting Chung, a Chinese store.

Q. Is that the same store you saw him in when he was a boy? A. No.

Q. How old was he then when you saw him in this other store? A. About 30 or 32 years old.

Q. Where was that store?

A. On Commercial Street.

Q. What number? A. 741.

Q. What was he doing then?

A. He just came back from China and was just living there.

Q. How long had he been back from China when you saw him?

A. I saw him on the day he came on shore.

(Deposition of Wong Chung.)

Q. Where did you see him?

A. In that store of Quong Ting Ching.

Q. How long did he stay there at that time?

A. About a month or 5 or 6 weeks, and then he went back east travelling.

Q. Were any of his people there at that building at the time he landed when you saw him?

A. No, he had friends there, that is all.

Q. When did you see him next after that?

A. I saw him often after that.

Q. I am asking when next?

A. When I had the opportunity, when I went out, I would go to see him.

Q. I want you to tell how long after you saw Yee Chung there at this store after he had landed and after he had left the store [163] and went through the country back east, you saw him again.

A. He came back in about 6 or 7 years and I saw him.

Q. It was 6 or 7 years then from the time when he landed here in San Francisco and stopped about a month at that store until you saw him again?

A. Yes.

Q. Then where did you see him?

A. February of last year I saw him in Quong Ting Ching's.

Q. Is that the next time you saw him after this time he landed in San Francisco that you have told about? A. I saw him many times.

Q. Did you see him at all from the time he landed, when you say you saw him on the day he landed and

(Deposition of Wong Chung.)

came back from China—did you see him any place for the next 6 or 7 years?

A. He used to come back here sometimes and then I would see him during that time.

Q. How long was it after he went back east until he came back to San Francisco again and you saw him? A. About six years before I next met him.

Q. You saw him then when he came back six years after he had gone away? A. Yes.

Q. Where? A. At Quong Ting Ching's.

Q. That is the same store that he stopped at when he landed on his return from China? A. Yes.

Q. How long did he stay that time?

A. He came here in February and lived there until March—about March.

Q. What did he do?

A. When I went to see him he told me he was going to go back to China, but he didn't know exactly when he would go because he had not obtained his papers.

Q. He stayed there about a month that time, did he?

A. More than that; I think about three months. [164]

Q. You talk pretty fair English, don't you?

A. Not very much.

Q. You understand me very well, don't you?

A. A little, not all.

Q. You say he stayed two or three months that time? A: I can't say exactly; it was about that.

Q. Do you know where he went when he left then?

(Deposition of Wong Chung.)

A. He told me that he wanted to go back to China, but not having obtained his papers yet, he was going to go and look for some work to do.

Q. When did you see him the next time?

A. About 3 or 4 weeks.

Q. Where did you see him?

A. At Quong Ting Ching's place.

Q. The same place? A. Yes.

Q. When was it that you saw him this last time you have mentioned? A. About 3 or 4 weeks ago.

The COURT.—Q. You say Yee Chung came to see you from Pittsburg?

A. When he came from Pittsburg I went to see him.

Q. Where did you go to see him?

A. At Quong Ting Ching's store.

Q. How many times did he come here from Pittsburg that you went to see him?

A. Many times—most every night I came down town.

Q. When was that? A. Last year.

Q. What time last year?

A. The Chinese second month, February.

Deposition of Yee Foo, for Defendant.

YEE FOO, called for the defendant, sworn.

Mr. McNAB.—Q. Your name is Mr. Yee Foo?

A. Yes.

Q. What is your business? A. Merchant.

Q. With what firm are you?

A. Wing Hing Lung & Company.

Q. Is that a big firm or a small firm?

(Deposition of Yee Foo.)

A. It is a big firm of importers. [165]

Q. About how much business does it do every year?

A. We are doing about, I think, about $300,000 a year.

Q. How much duty do you pay every year to the United States Government?

A. About forty thousand or more sometimes.

Q. About $40,000 a year? A. Yes.

Q. Where were you born?

A. I was born in China.

Q. When did you come to the United States?

A. I came to the United States in 1872.

Q. While you were in the United States did you know Yee Kim Sing? A. Yes.

Q. Who was Yee Kim Sing?

A. Yee Kim Sing, he was a merchant at 728 Sacramento Street.

Q. What did he do in that firm?

A. He was the bookkeeper in that firm.

Q. What was the name of the firm?

A. Quong Wah Chong.

Q. What kind of business was it engaged in?

A. Importing, general importing store—a general merchandise and clothing store.

Q. You say you came here in 1872. When did you first return to China?

A. I returned to China in 1879.

Q. When you left for China did Yee Kim Sing have any children? A. No.

Q. No children? A. No.

Q. How long did you stay in China?

(Deposition of Yee Foo.)

A. I stayed in China about eight months—8 or 9 months.

Q. Then you came back to San Francisco?

A. Yes.

Q. In what year? A. 1880.

Q. When you came back from China in 1880 did Yee Kim Sing have a child? A. Yes.

Q. What kind of a child, a boy or girl?

A. A boy. [166]

Q. Do you know the American month that you came back from China?

A. I think I came back about sometime early in August.

Q. August or September? A. Yes.

Q. Whatever the records in the Immigration office show is right?

A. No, nothing showed at that time because the restriction law not passed at that time.

Q. Did you see this boy that had been born to Yee Kim Sing after you came back from China?

A. Yes, I didn't see him born but I seen him when he was a few months old, a child, after I came back.

Q. You were not here when he was born?

A. No, I was not here.

Q. You were in China? A. I was in China.

Q. Now after you came back from China in 1880 where did you stay?

A. I stayed at Quong Wah Chung's; I stayed there for a while.

Q. Quong Wah Chung's was the store where Yee Kim Sing was bookkeeper?

(Deposition of Yee Foo.)

A. Yes, the bookkeeper.

Q. Did you have any business with Yee Kim Sing in that year?

A. In that year, on the end of the year he told me to go up to start up business, and I went up to Woodland to start business in Woodland, and he sent the goods up there to me to start in with.

Q. Do you know whether or not Yee Kim Sing after that left the United States?

A. I think so, in 1881.

Q. Where did he go? A. He go to China.

Q. Did he take his wife and this boy with him?

A. Yes.

Q. Now then did he come back from China?

A. Yes, he came back I think the next year.

Q. Did he bring this boy and his wife with him?

A. No.

Q. When did you go next to China?

A. I next go to China in 1884.

Q. How long did you stay—about how long?

A. I stayed there about ten months. [167]

Q. While you were there in China in 1884, did you see Yee Kim Sing's wife and this baby boy?

A. Yes.

Q. You saw the baby, did you?

A. I saw the baby.

Q. Where? A. I went to visit them.

Q. Where was your village that you lived at while in China?

A. My village is about three miles from his.

Q. How often did you see Yee Chung and his mother?

(Deposition of Yee Foo.)

A. That time I go home I only see him 2 or 3 times.

Q. What was this boy's name? A. Yee Chung.

Q. Did you go back to China again?

A. I didn't go back to China until Kwong Sue 22; I have to get the date.

Q. 1896? A. I think 1896 or 1897.

Q. In 1898 you went back to China? A. Yes.

Q. How long did you stay there that trip?

A. I stayed there about a year; just about a year—I think not quite a year but near a year.

Q. You stayed until 1897, did you? A. Yes.

Q. While you were there did you see Yee Chung?

A. Yes.

Q. What happened while you were there, if anything, about Yee Chung?

A. After I was there, when I go to visit him his mother told me that her boy going to be married pretty soon; then afterwards he got married and he sent me invitation to attend the wedding.

Q. Did you attend the wedding? A. Yes.

Q. What village was it in?

A. The village of Chung Doey.

Q. You say you returned to the United States in 1897. How many months did you say it was that you were in China that time?

A. I in China about, I think it was, one year.

Q. About one year? A. Yes.

Q. How long after you got to China was it that the wedding took place? [168]

A. I think it was about two or three months.

Q. Before you left China did anything happen in

(Deposition of Yee Foo.)

Yee Chung's family?

A. Well, I didn't see anything much happen in his family at that time, because I visited him about two months before I left China.

Q. Did you go back to China again after that trip?

A. Yes.

Q. When?

A. In 1907—the next year after the earthquake.

Q. Did you make any trip in 1901?

A. In 1901, no.

Q. What year did you say you went back to China again?

A. In 1907. Let me see— which trip have you been asking me about now?

Q. You say you came back here in 1897?

A. Yes.

Q. When was the next time you went to China?

A. Well, the next trip—I remember that I went in Kwong Sue 22, and then in Kwong Sue 27 I make a trip again.

The INTERPRETER.—Kwong Sue 27 is 1901.

Q. 1901? A. Yes.

Q. How long did you stay that time?

A. Just about a year.

Q. While you were there in 1901 did you visit Yee Chung's family? A. Yes.

Q. Was Yee Chung there?

A. No, he was not there.

Q. Where was he?

A. He came back to the United States.

Q. Now then after you came back that time did

(Deposition of Yee Foo.)

you make any trip to China? A. Yes.

Q. What year was that?

A. That was in 1907—after the earthquake one year.

Q. One year after the earthquake? A. Yes.

Q. Now then on that trip did you see Yee Chung?

A. Yes.

Q. He was in China then, was he?

A. He was in China.

Q. How long before you got there had he got there to China? [169]

A. He got there before I did; I think he got there pretty near 10 months before.

Q. About 10 months before you got there?

A. Yes.

Q. Did you make another trip to China after that?

A. No.

Q. Now I show you this picture and ask you whether or not it is the Yee Chung you are speaking about? A. Yes, that is Yee Chung, sure.

Q. That is Yee Chung sure? A. Yes.

Q. Can you swear that this is the boy that grew up as the son of Yee Kim Sing? A. Yes.

Mr. McNAB.—I have shown the witness the photograph on the upper left-hand corner of "Defendant's Exhibit 'A' at San Francisco."

Q. Just one question, if the Court should deem it material. Mr. Yee Foo, when a passenger to the United States from China before the Exclusion Law bought his ticket did he go to the steamship company to buy the ticket?

(Deposition of Yee Foo.)

A. No, they *all through* the agent. The agent, he might hold all the tickets he can get, to make a profit on them; on account of sometimes more passengers coming, everybody want to buy tickets because the steamship only allow so many on each trip; when he get hold of some sometime he make from thirty to $50 higher than what the steamship company get, because the steamship company never sell any tickets through their agent.

Q. Do you as a passenger give your name to the steamship company?

A. No sir, they never do; they give what they please; just like Charlie or Jones or whatever kind of name you go by, you give, and they give you a ticket—you can claim your name is Jones or you can claim your name is James and so on; they never give the right name. But now since the laws have been passed, when the steamship company sell the ticket he has to give the [170] name; they are now pretty strict, the last few years; they want the people to get the return certificate and show it before they will sell the ticket; that is in the last ten years.

Q. You must show your return certificate before you get your ticket?

A. Yes; they used to take any name at all.

Cross-examination.

Mr. SCHOONOVER.—Q. When was the change made?

A. I think it is after they registered; I think it was about a few years; I think a little over 10 years; about 10 years ago; they used to have to register but

(Deposition of Yee Foo.)

still they never minded at that time at all; lately, with so many going back, the steamship company would not let them go without showing the return certificate, so that there won't be any mistake about it.

Deposition of Harry Edsell, for Defendant.

HARRY EDSELL, called for the defendant, sworn.

Mr. McNAB.—Q. Mr. Edsell, until recently, you have occupied the position of Assistant Commissioner of Immigration at the port of San Francisco?

A. Yes.

Q. In the absence of General Backus acting Commissioner? A. Yes.

Q. Prior to that time, Mr. Edsell, and while you were in the immigration service, where were you stationed?

A. Immediately prior to my coming to San Francisco I was stationed in Washington; prior to that in Montreal, Canada, and prior to that in Sumas, Washington, on the northern border of Washington, and prior to that at Port Townsend, Washington.

Q. At any of those stations, Mr. Edsell, did you have occasion to interest yourself and familiarize yourself with the manifests kept and maintained by the Canadian Government on incoming Chinese at the port of Vancouver? A. Yes. [171]

Q. At what point particularly did you have occasion especially to interest yourself in those records?

A. Well, at Sumas, as Chinese Inspector-in-charge

(Deposition of Harry Edsell.)

of the United States Immigration Service, I handled Chinese applicants for admission to the United States, who came to the American continent via the Canadian Pacific Steamship Company to Vancouver and by train to Sumas where they applied for admission to the United States. Very frequently questions would arise in connection with their applications for admission which would make it desirable to examine the manifests of the Canadian customs service at Vancouver.

Q. With a view to examining them and familiarizing yourself with them, did you cause any copies to be made of those records?

A. After I had been at Sumas for a time—

The COURT.—Q. By the way, where is Sumas?

A. On the northern border of Washington, about 50 miles from Vancouver. I had received so many inquiries from stations, interior stations in the United States and other ports of entry as to the departure of Chinese from the United States via Vancouver that I investigated the Canadian customs records with a view to making a copy of them so that we could answer questions concerning departures without referring them to the Canadian customs service. Incidental to that investigation I decided to make copies of certain records and sent a clerk over from my office to make these copies, and had him there for some weeks.

Mr. McNAB.—Q. About how many did you copy, do you remember?

A. Well, I should say from 800 to 1000; but it

(Deposition of Harry Edsell.)

should not be understood that those were in-coming records; those were all out-going manifests.

Q. During what year would those cover? Were they as far back as 1879? A. Oh, no.

Q. They were the modern records?

A. Yes. **[172]**

Q. Has there been any change in the Canadian system of registration during recent years?

A. I am not able to say.

Q. As I understand you used these records when a Chinese desired to depart from the United States, you consulted these records to ascertain whether or not the ship designated was actually the ship that he said that he was on?

A. No, not exactly that. A Chinese would come to San Francisco claiming to be the son of a merchant, for instance; the father claimed that he was in China at such a time as to make possible his paternity of that boy; he would claim that he had made the trip departing via Sumas and Vancouver; they would come to me for verification of the departure in order to determine whether the essential trip was proved.

Q. Did you find any mistakes in the records?

Mr. SCHOONOVER.—I object to that as immaterial.

The COURT.—Yes. This is going back the other way. The objection is sustained.

Mr. McNAB.—Q. Did you ever have any occasion to inspect the manifests of in-coming Chinese?

A. Yes.

(Deposition of Harry Edsell.)

Q. Over how long a period of time?

A. For no particular length of time, but for specific instances of arrivals.

Q. Find any mistakes in them?

Mr. SCHOONOVER.—I object to that as immaterial, irrelevant and incompetent, and calling for a conclusion of the witness.

The COURT.—Yes; that would open up a wide range of inquiry to find out whether these mistakes were mistakes in fact, if you wanted to pursue it down to any degree of definiteness.

Mr. SCHOONOVER.—And the Court would not want the opinion of the witness. It would want the facts.

Mr. McNAB.—Let me ask this question: I presume in your experience there you had cases where a Chinese would claim to **[173]** have come in on a certain steamer, and his name was not on the manifest; is not that correct?

A. I believe I have known of such instances.

Q. Did the Immigration Service consider that as conclusive evidence against them?

Mr. SCHOONOVER.—I object to that as it would have no bearing on this case, and would not in any way bind this court.

Mr. McNAB.—That may be quite true. I think it is a close point. My purpose, to be perfectly frank, is to show, if it is permissible under the rules of evidence, that if a name was given by a Chinese as coming in on an in-coming steamer, and on a search of the manifest that name was not found

(Deposition of Harry Edsell.)

there it was not taken as conclusive evidence that he did not come in on that steamer; in other words, that while in fact if his name was there, it might be taken as conclusive evidence, if all the identifying marks were there, yet the fact that his name was not there was not taken as conclusive evidence against him. That is all I want to prove.

The COURT.—I would rather suppose, in spite of whatever persuasiveness that fact might have on the Immigration Department that the Court would not be justified in leaning upon the Immigration Department for support in determining what conclusion should be arrived at in this case. I realize that it is a very important question in this case, but at the same time, as I indicated before, I know of no reason why this case should not be tried according to the rules of evidence that are applicable in court.

Mr. McNAB.—That is the only way I knew how to get at that. That is all, Mr. Edsell.

Deposition of Yee Hing Wo, for Defendant.

YEE HING WO, called for the defendant, through the interpreter, sworn, testified as follows: **[174]**

Mr. McNAB.—Q. What is your business?

A. Drug business.

Q. Where is your place of business located?

A. Dupont Street.

Q. What number? A. 830.

Q. A large store or small store?

A. A large store.

(Deposition of Yee Hing Wo.)

Q. Where were you born? A. In China.

Q. When did you arrive in San Francisco first?

A. In the sixth year of Kwong Sue (1880).

Q. Did you know Yee Kim Sing, a merchant in San Francisco before you came to San Francisco or did you make his acquaintance after you arrived here?

A. I made his acquaintance after I arrived in the United States.

Q. Who sent you to San Francisco—how did you happen to come?

A. I came here by myself, on my own responsibility.

Q. Were you connected with the same house in Hong Kong?

Mr. SCHOONOVER.—I prefer that you ask what house, if any, he was connected with.

Mr. McNAB.—Q. Were you connected with any house in Hong Kong before coming here?

A. Yes.

Q. What house was that?

A. Wong Ting Chung.

Q. Had that any connection with the firm that Yee Kim Sing was working for?

A. Yes, he was connected with that firm.

Q. Now, after you arrived at San Francisco where did you go to engage in business?

A. Quong Wah Chung.

Q. What street and what number?

A. 728 Sacramento Street.

Q. Were you a member of that firm? A. Yes.

(Deposition of Yee Hing Wo.)

Q. Was Yee Kim Sing a member of that firm?

A. Yes.

Q. What business did he do in that firm, what was his part of the work? A. He was bookkeeper.

Q. Now at the time you arrived from China in 1880 did Yee Kim Sing have any children?

A. Yes, he had one son.

Q. About how old was the son when you arrived here? A. 4 or 5 months old.

Q. What did Yee Kim Sing do after that; did he go anywhere? **[175]**

A. In Kwong Sue 7, the latter part of the year, he went back to China.

Q. Who did he take with him, if anyone?

A. He took his wife and child back with him.

Q. Did Yee Kim Sing come back to San Francisco or did he remain in China?

A. Yes, he came to the United States.

Q. Did he bring his wife and boy with him, or not? A. No.

Q. When did you go to China first after coming here?

A. The 9th year of Kwong Sue (1883)?

Q. How long did you stay in China?

A. I stayed—I came back here in the 10th year (1884).

Q. When you arrived in China was Yee Kim Sing there?

A. When I went there to China Yee Kim Sing was not there at that time.

Q. Where was he?

(Deposition of Yee Hing Wo.)

A. He was in San Francisco, at Quong Wah Chong's store.

Q. When you went back to China did you take anything back with you to Yee Kim Sing's family?

A. Yes, I did.

Q. Who did you take it from and who did you take it to?

A. You mean did I take anything back to Yee Kim Sing's family?

Q. Yes. A. Yes, I took some clothes.

Q. From whom? A. Kim Sing.

Q. Who were the clothes taken to?

A. Taken to the wife.

Q. Now, then, when you were in China did you see this baby of Yee Kim Sing's and the wife?

A. Yes.

Q. How long did you stay in China that time?

A. I came back here in the 10th year of Kwong Sue.

Q. About how old was this baby at that time,—how old did it look? A. About four years old.

Q. What was his name? A. Yee Chung.

Q. When did you go to China again?

A. Kwong Sue 15th year (1889). **[176]**

Q. How long did you stay in China that time?

A. I came back to the United States in 1891.

Q. You were there then about two years, were you? A. Yes.

Q. While you were back there, did you see Yee Chung and his mother? A. Yes.

Q. About how many times? A. Many times.

(Deposition of Yee Hing Wo.)

Q. How old was the boy then?

A. About 12 years old.

Q. About how big was he; point out with your hand? A. About that big (illustrating).

Q. Now, after you returned to San Francisco about 1891, I think you said, how long did you remain in San Francisco before you went to China again?

A. I went back there again in the 24th year of Kwong Sue (1898).

Q. How long did you stay in China?

A. I came back the next year.

Q. During the time you were there did you see Yee Chung's family?

A. I went to his house and he was not there—he had come to the United States. But I saw his mother.

Q. Yee Chung had come to the United States?

A. Yes.

Q. Now, ever since you returned to China in 1900 where have you lived? A. At Po Shang Tong.

Q. Is that the drug-store? A. Yes.

Q. I show you this picture and ask you whether or not you recognize that as Yee Chung (showing)?

A. Yes.

Q. I ask you whether or not you recognize this as the face of a boy that you knew as Yee Chung when you left China the last time? A. Yes.

Mr. McNAB.—The witness was shown the picture in the upper lefthand corner of "Defendant's Exhibit 'A' at San Francisco."

(Deposition of Yee Hing Wo.)

Q. Have you seen Yee Chung since he came to San Francisco in [177] the last few years?

A. Yes; this year I seen him in the United States.

Cross-examination.

Mr. SCHOONOVER.—Q. When was the last time you saw him in China?

A. The 15th year of Kwong Sue.

Q. Then, where did you next see him?

A. In the first year of Shun Ning (1909).

Q. It was ten years from the time you saw him in China until you saw him again in this country, was it? A. Yes.

Q. Where did you see him in this country in 1909?

A. He used to come to my store, and sometimes I would go to his store, Quong Ting Ching's; sometimes I would go to his place to visit and sometimes he would come to my place to visit.

Q. How often did he visit you in 1909 in San Francisco? A. He came continuously.

Q. How long was he here in 1909?

A. Over a month, and then he went back east.

Q. When you first saw him in San Francisco in 1909 who told you it was Yee Chung?

A. I recognized him myself.

Q. Who told you he was here?

A. As soon as he came ashore he came to see me.

Q. He came to your place of business?

A. Yes.

Q. Did he tell you who he was?

A. I recognized him when he came to see me.

(Deposition of Yee Hing Wo.)

Q. You recognized him as a boy you had seen in China; is that what you mean? A. Yes.

Q. How long have you been in this country?

A. Well, I came here in the 25th year of Kwong Sue, and I have been here until now; I have been in business all of that time.

Q. What was your business before that, here in San Francisco?

A. I was at Quong Wah Chung's store. **[178]**

Q. Is that the only store you were ever in except the drug-store that you are in now in San Francisco?

A. That is the only store.

Q. Is this business you are in now a firm business? A. Yes.

Q. How many members of the firm?.

A. There are over 30 interested in it, but there are about 12 in the store.

Q. They have 12 partners? A. Yes.

Mr. McNAB.—I think there was some confusion as to when the witness first came to the United States.

Q. When did you say that you first came to America, in what year?

A. In the 6th year of Kwong Sue (1880).

Mr. SCHOONOVER.—Q. What do you handle in your business that you are in now?

A. I handle drugs.

Q. Wholesale or retail?

A. Wholesale and retail.

Q. How big a room do you occupy in your busi-

(Deposition of Yee Hing Wo.)

ness? A. A very large store.

Q. Is your trade wholly with Chinese?

A. Yes.

Deposition of James H. Clark, for Defendant.

JAMES H. CLARK, called for the defendant, sworn.

Mr. McNAB.—Q. How old are you, Mr. Clark?

A. I am in my 64th year.

Q. Where were you born? A. New York.

Q. What is your business?

A. Merchandise and insurance broker.

Q. Where do you do business chiefly—with what class of people? A. Chiefly with Chinese people.

Q. How long have you been in business in Chinatown?

A. Well, I have been in Chinatown since I was a boy; I commenced there in 1868.

Q. They say you are the oldest man in Chinatown, I believe, do they not?

A. I believe that is what they say. **[179]**

Q. What business do you deal in chiefly with the Chinese? A. Rice, oil, tea and insurance.

Q. In dealing in these products during all these years has it been necessary for you to go from mercantile house to mercantile house? A. Yes.

Q. Did you know a Chinese merchant in San Francisco about the year 1879 or 1880 by the name of Yee Kim Sing? A. Yes.

Q. With what firm was he in business?

A. He was the bookkeeper for Quong Wah Chong & Company.

(Deposition of James H. Clark.)

Q. What street were they on? A. Sacramento.

Q. Do you remember what the number was?

A. I think the old number was 728.

Q. What business were they in?

A. They were running a regular Chinese store, rice, oil, tea and tobacco.

Q. How frequently were you in the habit of calling there? A. Five days in the week.

Q. Do you know where Yee Kim Sing lived?

A. He lived upstairs over the store.

Q. Were you ever up there? A. No.

Q. It is the habit of white men not to go into those places? A. Not at that time.

Q. Did you ever see his wife?

A. I saw a lady that I supposed was his wife.

Q. Where?

A. Sometimes in the morning I saw her in the store.

Q. Do you know of any child being born to Yee Kim Sing's wife?

A. According to my memory I think about 1880 or 1881 there was a child born.

Q. Did you see a child? A. I saw a baby.

Q. Where? A. Downstairs.

Q. Who had it?

A. This lady that I supposed was his wife.

Q. Do you know whether it was a girl or a boy? [180] A. I could not tell you.

Q. You don't know? A. No.

Q. Now then, about that time, if you can recall, did Yee Kim Sing leave San Francisco?

(Deposition of James H. Clark.)

A. About that time, I think it was about 1881 he left San Francisco.

Q. According to your recollection? A. Yes.

Q. Where did he go? A. I suppose to China.

Q. Who went with him?

A. This lady and the child.

Q. Did Yee Kim Sing come back to San Francisco? A. Yes.

Q. Did the lady and child come back with him?

A. I never saw them.

Q. After Yee Kim Sing came back to San Francisco did he continue to do business?

A. He continued to do business, yes.

Q. About how long, if you remember?

A. I think he quit his position about 1896.

Q. Where did he go then, if you know?

A. I don't know.

Q. You don't know? A. No.

Q. You say he was bookkeeper?

A. Bookkeeper.

Q. Have you ever met this Yee Chung who is the defendant in this case? A. Yes.

Q. About how long ago did you meet him?

A. The last time, it appears to me, as near as I can remember, was about six years ago. I met him in Quong Ting Shing's store.

Q. Who introduced you to him?

A. They did not exactly introduce him; they told me he was the old bookkeeper's son.

Mr. SCHOONOVER.—I object to that.

The COURT.—Let the answer go out.

(Deposition of James H. Clark.)

Mr. McNAB.—Q. Who was with him when they told you?

A. I think it was about the Chinese New Year's I went there; I am [181] not quite sure, and I think that that gentleman over there was with him.

Q. This gentleman over in the corner with the glasses? A. No.

Q. The one who just left the witness-stand?

A. Yes.

Q. Mr. Yee Hin Wo? A. Yes.

Q. Did you know Yee Hin Wo, the gentleman you referred to when he came to San Francisco the first time?

A. I met Mr. Yee Hin Wo in Quong Wah Chong's store.

Q. That is the store in which Yee Kim Sing was bookkeeper? A. Yes.

Q. About how early a date?

A. Well, they started in business—it was about the time of the Tilden excitement; it must have been in the latter part of 1876 or the beginning of 1877.

Q. He was in the firm then?

A. He was the manager of the firm.

Q. That is, the gentleman who has just left the stand was the manager of the firm? A. Yes.

Q. By the way, did you know Yee Foo who testified before?

A. Yes, I am well acquainted with him.

Q. What business is he in?

A. He is manager of Wing Hing Ling & Company.

Q. What is the size of that firm?

(Deposition of James H. Clark.)

A. A very large firm.

Q. What is the size of Yee Hin Wo's business?

A. It is a smaller business.

Q. These men who testified here this morning are all merchants?

A. I did not hear them all; the only testimony I heard—I just heard Yee Hin Wo's testimony.

Q. Do you know Yee Foo?

A. Yes, he is a partner in Wing Ting Ling & Company.

Q. A large business?

A. They do a very large business.

Cross-examination.

Mr. SCHOONOVER.—Q. How long were you engaged in the business, Mr. Clark?

A. I started in business when I was a boy in 1868. [182]

Q. You have sworn to the identity of a great many Chinamen during that time, have you not?

A. Yes, to quite a number.

Q. In the Immigration Department of the Government? A. Yes.

Q. By quite a number how many do you mean probably, all told? A. Probably 75 or 100.

Q. Do you think 75 would cover the total number?

A. I think it would.

Q. Your whole business was to sell Chinese goods, I understand, during all of this time? A. Yes.

Q. Or else to write merchandise insurance?

A. Yes. I have only been in the insurance business about three years.

(Deposition of James H. Clark.)

Q. Up to that time your business was to sell them goods? A. Yes.

Q. You made some mistakes in your sworn testimony, did you not, as to the identity of some of these Chinese for whom you were testifying?

Mr. McNAB.—I object to it as immaterial; there is no question of identity involved in this witness' testimony here and therefore it would not be competent.

The COURT.—Yes.

Mr. SCHOONOVER.—That is true, but if a witness is mistaken as to the identity, that tends to affect his credibility as to identifying a man.

The COURT.—All he testified to of any importance was the fact that this Yee Kim Sing had a child in San Francisco.

Mr. SCHOONOVER.—I am asking if he has not made some mistakes in his testimony, with reference to identity.

The COURT.—The objection is sustained.

Mr. SCHOONOVER.—Q. You are still in this merchandise insurance? A. Yes. [183]

Deposition of Yee Shun Chung, for Defendant.

YEE SHUN CHUNG, called for the defendant, through the Interpreter, sworn, and testified as follows:

Mr. McNAB.—Q. What is your business?

A. I am interested in the firm of Wing Hong Shing, a general merchandise store.

Q. Where is that store located?

A. 816 Washington Street.

(Deposition of Yee Shun Chung.)

Q. About how large a business does that firm do in Chinese merchandise every year in San Francisco? A. Over *twenty ten* thousand dollars.

Q. About how much does it pay to the United States Government in duties on imported goods every year? A. About $40,000.

Q. That is paid in cash to the United States Government every year?

A. Yes, about that; sometimes as much as $50,000.

Q. Sometimes as much as $50,000 a year?

A. Yes.

Q. When did you come to San Francisco first?

A. The 3d year of Kwong Sue (1877).

Q. Did you know Yee Kim Sing when he lived in San Francisco? A. Yes.

Q. What was his business and where was he engaged in business?

A. 728 Sacramento Street, with the firm of Quong Wah Chong, a general merchandise store.

Q. What position did Yee Kim Sing occupy there? A. He was a bookkeeper there.

Q. Do you remember of Yee Kim Sing going to his country, to China? A. Yes.

Q. Now, before Yee Kim Sing went to China, do you know anything about any child being born to his wife?

A. Yes, at the time he went back to China he had a small boy.

Q. Do you remember the fact that the child was born? A. Yes.

Q. Tell us what you knew about it?

(Deposition of Yee Shun Chung.)

A. I knew that he was born in the very first or second month of the 6th year of Kwong [184] Sue, in the upstairs of Quong Wah Chong's.

Q. Was there any Chinese custom, any Chinese celebration of any kind about the birth of that child?

A. Yes, there was.

Q. Tell us, what it was and whether you were there?

A. Yes, I went to the shaving feast.

Q. When did you go to China first?

A. In the 7th year of Kwong Sue (1881).

Q. Do you remember after the baby was born Yee Kim Sing going back to China? A. Yes, I do.

Q. Who went with him?

A. The three of them, the father, mother and child.

Q. What was the child's name, if you know?

A. Yee Chung.

Q. You say you went to China in 1881. Where was Yee Kim Sing at that time?

A. I saw him in his native village in China.

Q. About how long before you went to China had Yee Kim Sing gone to China?

A. He went to China several months before I did.

Q. How many years did you remain in China?

A. About 5 or 6 years.

Q. Now, during that time did you see Yee Kim Sing's wife and this baby boy? A. Yes.

Q. About how often? A. Two or three times.

Q. When did you go to China again?

A. On the 24th year of Kwong Sue (1898).

(Deposition of Yee Shun Chung.)

Q. When you went to China in 1898 was Yee Chung there?

A. He had come back to the United States.

Q. Did you see his wife? A. Yes.

Q. Did she have any babies?

A. Yes, I saw one boy.

Q. When did you go back to China again?

A. The 29th year of Kwong Sue (1903).

Q. How long did you stay in China that time?

A. I came back in the 31st year of Kwong Sue (1905). [185]

Q. During the six years that you were in China did you see Yee Chung's wife and family?

A. No.

Q. You did not see them? A. No.

Q. First of all did you see Yee Chung in China?

A. No.

Q. Did you see any of his family, or not?

A. Yes, I saw his wife there.

Q. Did you see any children?

A. Yes, I saw the son.

Q. How old do you think Yee Chung was when you saw him last in China? I withdraw the question and will get at it in a different way.

The INTERPRETER.—He is figuring it. He says he does not know exactly. He was about 4 or five years old then.

Q. When was the next trip that you went back to China after 1903?

A. The 3d year of Shun Nung (1911).

Q. Now, before you took that trip in 1911, did you

(Deposition of Yee Shun Chung.)

see Yee Chung anywhere? A. Yes, I did.

Q. Where did you see him?

A. I never saw him at the time I went back to China; he was back east.

Q. Did you see Yee Chung in San Francisco at any time?

A. I saw him once in San Francisco.

Q. About when?

A. I saw him in the first year of Shun Ning, in San Francisco (1909).

Q. Where did he come from?

A. He came from China.

Q. Where did he go?

A. He went back east to Pittsburg.

Q. Did you go back to China after that?

A. No, not since I went back to China the last time in the 3d year of Shun Ning (1911).

Q. When you went back in 1911, did you see Yee Kim Sing?

A. Yes, I went to his house and visited him.

Q. Did you see Yee Chung's wife? A. Yes.

Q. Did you visit Yee Kim Sing often?

A. Yes, very many times.

Q. Did you have any conversations with him about his family, his son and others?

A. Yes, I did. [186]

Q. State whether or not you can identify that picture which I now hand you as the Yee Chong whom you have been speaking of as the boy?

A. That is the boy.

Q. Is it the same person whom you knew as a boy?

(Deposition of Yee Shun Chung.)

A. Yes.

Mr. McNAB.—The witness is shown the photograph heretofore shown the other witnesses in the upper lefthand corner of the paper marked "Defendant's Exhibit 'A' at San Francisco."

Q. How old are you now? A. 63 years old.

Q. You are still in this firm that you have spoken of on Washington Street? A. Yes.

Cross-examination.

Mr. SCHOONOVER.—Q. Did you see Yee Chong at any time between the time he was 4 or 5 years old when you saw him in China until you saw him in 1909 in San Francisco?

A. I saw him when he was 6 or 7 years old.

Q. That is the age that you thought about so long awhile ago, and finally said 4 or 5?

A. I saw him between the age of 5 and 7 years.

Q. How old was he in 1907 when you next saw him in San Francisco?

A. I did not see him until the 3d year of Shun Ning, which is 1911.

Q. How old was he then?

A. 12 or 13 years old.

Q. How old is he now?

A. He is 36 years old now.

Q. He was between 5 and 7 years old when you saw him last in China; is that right?

A. About 6 or 7 years old.

Q. You said on examination by Mr. McNab, that you only saw him once in San Francisco and that was in the year 1909; you said in answer to my ques-

(Deposition of Yee Shun Chung.)

tion that you saw him in 1911. What year was it you saw him? A. In 1911, not 1909.

Q. Did you see him at any time between the time you saw him in China when he was from 5 to 7 years old until one time you saw [187] him in 1911 when you saw him in San Francisco?

A. No, not until the 3d year of Shung Ning, or 1911.

Q. You identified this picture marked "Defendant's Exhibit 'A' at San Francisco," did you?

A. That is Yee Chong.

Q. That is a good picture of him at what age—when did he look like that?

A. About 36 years old.

Q. Is that the only picture you ever saw of him?

A. That is the only picture I ever saw of him.

The COURT.—Q. What year was it that you saw Yee Chung in China when he was 4 or 5 or 5 or 6 years old as you have said?

A. The 13th year of Kwong Sue (1887). He was about 6 or 7 years old at that time.

Q. You spoke of having seen Yee Chong in San Francisco in 1911 and also having seen him in China in 1911?

A. No. I saw Yee Chong in 1911 in San Francisco here; I did not say that I saw Yee Chong in China in 1911.

Q. What year was it you saw him in China the last time? A. I saw him in 1911 in China.

Q. That is what I asked you a moment ago, and you said you did not?

(Deposition of Yee Shun Chung.)

A. I saw the father of Yee Chong in China in 1911.

Q. Didn't you say a moment ago that you didn't see Yee Chong in China in 1911?

A. No, I didn't say that; I didn't see him in China at that time.

Mr. McNAB.—I think there is a little confusion as to the interpretation.

The COURT.—When was the last time you saw Yee Chong in San Francisco?

A. In the year 1909.

Q. Give us the Chinese year?

A. Shun Ning, the first year of Shun Nung, the last part of the year.

Q. That is 1909? A. Yes.

Mr. SCHOONOVER.—What did he say before?

The INTERPRETER.—That was my mistake. [188]

Mr. SCHOONOVER.—Q. You repeatedly asked him after he had answered the question before. How does it come that you made the mistake?

The INTERPRETER.—There is two words in Chinese very similar. It was my mistake. [189]

In the United States District Court Within and for the Southern District of California, Southern Division.

Hon. BENJAMIN F. BLEDSOE, Judge.

No. 911—CRIMINAL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

YEE CHUNG,

Defendant.

Vol. II.

JOHN P. DOYLE,

Official Reporter Department 5, Superior Court, Los Angeles, California.

Filed Mar. 23, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [190]

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Friday, May 21, 1915, 2 o'clock P. M.

(Depositions having been taken meantime at San Francisco.)

Mr. MOODY.—If the Court please, I understood it was agreed at the last hearing that the Government might have the opportunity of producing any further evidence at this time that they might desire, and so I would like to recall the defendant to the

stand. Yee Chung, for further cross-examination.

The COURT.—All right.

Testimony of Yee Chung, in His Own Behalf (Recalled—Cross-examination.)

YEE, CHUNG, defendant herein, recalled for further cross-examination, testified through interpreter Chan *Kiy* Sing, as follows:

Cross-examination (Resumed).

(By Mr. MOODY.)

Mr. MOODY.—If your Honor will recall, at the last hearing had here, the United States introduced a picture and at that time offered to introduce a record of the Immigration Office, showing that a man by the name of Yee Kim Sing made a trip to China in 1895, and this was a part of the record of the office at Vancouver, and at that time this record was refused. I would like to re-offer that at this time, and in connection with it would like to call the Court's attention to the opinion in 164 U. S., in the case of Sandy White vs. [192] U. S. at page 102 (handing volume to Court).

Mr. McNAB.—Have you the record there that you wish to offer?

Mr. MOODY.—This is the record, that you have already examined and about which the discussion occurred before.

The COURT.—How is this material?

Mr. MOODY.—This record which I offer here is supposed to be and is certified to be a record of the Vancouver office of the United States Immigration Service, and the point upon which it was refused

(Testimony of Yee Chung.)

before is that it is *ex parte,* and an affidavit and a statement of a man who says his name is Yee Kim Sing, and in his affidavit says he was a merchant at 40 Harrison Street, Boston, and it gives the physical description of the man. The point I wish to call your Honor's attention to is that in the case which I presented a mere police record was admitted in evidence without it being shown that the contents of that police record were obtained upon a sworn statement or upon any statement made by the man whose name it purported to be on the record, but it was admitted to show that a man by that name was in the police station at that time. The point I wish to make is that if the Supreme Court has decided that that is competent, then such a record as is kept by the immigration authorities under color of law and under the rules and regulations of the department, and which shows that a man, on affidavit, said that his name was Yee Kim Sing, and that he went out of the United States at [193] that time, that it is competent evidence to show that a man by that name, claiming to be the same man who was at 40 Harrison Street, did depart from the United States at that time. It may not be absolutely conclusive, and it is not claimed that it is absolutely conclusive, that that proves that man to have been the man who was in business at No. 40 Harrison Street, but it is conclusive that a man left this country at that time and at that place by that name, who claimed to be that same man, and that is the purpose for which it is offered at this time.

(Testimony of Yee Chung.)

The COURT.—Of course, this case is essentially different from that. Here is a case where the man who made the record was in court and testified that he had made it, and it is admitted as a memorandum made at the time the things transpired.

Mr. MOODY.—And at the same time this is made as a record of that department, as having been sworn to, having taken place at that time; they made this record at that time, and it is a record of that department.

Mr. McNAB.—It is not contended, is it, that Yee Kim Sing, or Yee Kim Shing, or any person claiming to be Yee Kim Sing or Yee Kim Shing was ever in court in this case and was examined?

Mr. MOODY.—No, and that is not the fact in the case I have cited.

The COURT.—What is the materiality of this, Mr. Moody? [194] I have forgotten.

Mr. MOODY.—The materiality of it lies in this—that this man claims his father was a man named Yee Kim Sing, who was a merchant at No. 40 Harrison Street, Boston; and he further says that this picture looks like his father; and the materiality of it lies in showing the actions of this man Yee Kim Sing relative to the actions that Yee Chung ascribed to Yee Kim Sing in his statements as to what his father did at the times he said his father did those things.

Mr. McNAB.—Before your Honor rules, I would like to make my objection.

The COURT.—Oh, yes, you will have an oppor-

(Testimony of Yee Chung.)

tunity to object. He testified that this looks like his father?

Mr. MOODY.—He testified that this looks like his father.

Mr. McNAB.—Your Honor, I would like to have the testimony on that question.

The COURT.—Yes.

Mr. McNAB.—He testifies that it is not his father.

Mr. MOODY.—No; he said at first it was not his father, and then upon reconsidering it he said it looked like his father.

Mr. McNAB.—Well, we will just see what the record says.

Mr. MOODY.—Page 78.

Mr. McNAB.—We object to the admissibility of this, if your Honor please, on the ground that it is incompetent, irrelevant and immaterial, that it does not intend to impeach [**195**] the witness; that it is *res inter alia acti;* that it is merely a record of proceedings taken with regard to a person not confronted upon this trial, which are not binding upon this defendant, a record of an action taken by a person not related to the trial, without any privilege on the part of this defendant of cross-examining him or showing anything in relation to it whatever. He was shown a photograph at the trial, and said, "Is this a photograph of your father as he appeared when you went down to Boston with him from Burlington, Vermont (exhibiting picture)?

A. No. (After re-examining picture.) Yes, that looks like my father.

(Testimony of Yee Chung.)

Mr. SCHOONOVER.—I want to offer in evidence that partnership certificate there (handing paper to counsel).

Q. I will ask you if you remember testifying before the Commissioner here, Mr. Williams, in this same matter that when this picture just submitted to you now was submitted to you it was not a picture of your father.

Mr. McNAB.—He does not say now that it is a picture of his father; he says it looks like his father. His first statement was that it was not.

A. It was not this picture shown to me.

Q. Do you mean that the picture shown to you in the hearing here before the Commissioner was not the picture that was—that I just showed you here?

A. This looks more like my father, a resemblance to my father's picture, but it was not in the other one.

Q. You say this is a different picture, then, than was shown to you in the hearing before Mr. Williams, the Commissioner? [196]

A. It don't appear to me to be the same.

Q. That picture didn't look like your father looked when you saw him in Boston after you went down from Burlington, Vermont,—the picture that was shown to you before the Commissioner?

A. No.

Q. And this picture does look like your father looked at that time?

A. There was some resemblance of my father, but not exactly.

(Testimony of Yee Chung.)

Q. This? A. Yes.

Q. Ask him how his father differed from that in appearance.

A. He was not so fleshy at that time." If it were attempted to prove by a record here, if your Honor please, that a person by the name of Yee Kim Shing or Yee Kim Sing had admitted at any place that he departed from this country at a particular time, the mere attaching of a certificate to it would not make it admissible in evidence. At most it is a declaration or statement made by a person who is not a party to this record, and the mere addition of a certificate stating that it is found among the official records of a certain Department does not make it evidence in a court of justice. That sort of thing is very frequently used before a United States Commissioner and on hearings before inspectors, but we are here dealing with a question of evidence. It is an action between parties not parties to this record, which is not binding upon this defendant, and regarding matters over which we have no control by cross-examination.

In this particular case just offered here to-day the point at issue in the case is whether the man was or was [197] not in jail or was a witness at a certain particular time and place. Certain witnesses testified that he was not a witness at that time and was in jail, and they produced the records of the jailer to show that he was in jail at that time, it being one of the identical points at issue in the case.

Mr. MOODY.—And the further point at that time that the jailer failed to recognize the man. Now, if these records are of any importance whatever they are kept for one purpose, and that is to check the actions of Chinese in enforcing the exclusion laws, and if such a record as this is, is to be barred from production in a deportation case, then the United States is barred from a large part of the only kind of evidence that can possibly be produced in Chinese exclusion cases, that of checking the statements and actions of Chinese. In this case the document offered is not offered to prove anything other than that a man went out at that place and at that time who claimed that his name was Yee Kim Sing and he claimed that he was from 40 Harrison Street, in Boston, which is in all respects a record such as is prescribed to be kept by the immigrant inspectors at ports of the departure of Chinese persons intending to come back to the United States, and therefore, if your Honor please, I believe, in the light of this case, that being a criminal case, where the rules of evidence would be even more strict than in this case, which is a civil case, the [198] document should be admitted at this time for the purpose indicated.

The COURT.—You do not ask to have it admitted for the purpose of showing any fact that took place at that time or any fact that it is proper for the Government to record; you are seeking to have it introduced for the purpose of showing by the hearsay declaration of a third party that a certain in-

dividual did something at that time. Now, this will be admissible as evidence that the man whose picture is shown here went out at that time and place. I do not see anything to show that that took place, as a matter of fact. He went out, it is merely found, in Vancouver.

Mr. MOODY.—I think it shows on the red cover what it was for.

The COURT.—Yes, "Seen at Tacoma, Washington, January 4, 1896. Deported"—departed, I suppose,—"on British Steamer 'Victoria.'" Well, now, all that would be admissible in evidence for under any theory, would be the fact that an individual of whom this is a picture departed at that time. Not what he said about himself. Surely there is no principle of evidence—at least that I know anything about—that will permit you to produce a hearsay, unsworn, unofficial statement of somebody that is not here and never has been here before this court as evidence, and that is what you are seeking to do. You are seeking to show that this man said his name was Yee Kim Sing, and [199] that he belonged at 40 Harrison Street, Boston. He might have said a lot of other things and put them into an affidavit.

Mr. MOODY.—I admit that anything else other than showing the man's name and place of residence would not be competent.

The COURT.—Well, why do you differentiate between anything else he may have said and giving his name? He might have given the wrong name.

The question is, is it competent? The name he gave is taken as a fact just as much as anything else. Suppose he stated in this affidavit that this man Yee Chung here had never been in the United States before; there would be no reason why you should introduce that in evidence as a fact against this man here.

Mr. MOODY.—It would not be any part of the officers' duty there to ascertain that, however.

The COURT.—It is no part of the officers' duty to ascertain these things. Anything that is a part of the officers' duty will be admitted in evidence, but it is no part of the officers' duty to know whether or not this man is telling the truth.

Mr. MOODY.—We will offer it, then, for the purpose of showing that a man of the facial characteristics of the one whose picture is shown on there left there at that time.

The COURT.—It will be admitted for that purpose. [200] That the individual whose picture is shown on that document departed at that time, and for that purpose only.

Mr. McNAB.—In view of the fact that that also was made before we had a chance to object, I would like to place before your Honor's ruling the objection. May we do that?

The COURT.—Yes.

Mr. McNAB.—We object to it on the ground that such proof would be incompetent, irrelevant and immaterial and not in any way binding upon this de-

fendant and not tending to prove any issue involved in this hearing.

The COURT.—The objection is overruled.

Mr. McNAB.—Exception. That is just the photograph, as I understand it.

The COURT.—Oh, no; the whole thing. But it is admitted only for the purpose of showing that the individual whose photograph is pasted on one of these sheets of paper departed as stated in the record. It is competent for that purpose, in my judgment.

Mr. McNAB.—I would like to call Mr. Moody's attention to the fact that at the hearing in San Francisco I presented to the Court and presented to Mr. Schoonover an affidavit from the passenger agent at Pittsburg, Pennsylvania, which I frankly stated was not admissible in evidence, and is not admissible in evidence, but I asked Mr. Schoonover, in view of the fact that immigration authorities have power to **[201]** ascertain the truth of these things practically within a few minutes by wire, whether or not he would confirm this through the Immigration Department and, if it was true, would admit it,—that is, whether Yee Kim Sing departed from Pittsburg, Pennsylvania, by way of Portal, North Dakota, for China, buying his ticket over said roads named here on July 1, 1907. This witness testified, I think, under cross-examination, that his father departed for China, stating it at that time—at that time I knew nothing about it, but I asked that some investigation be made back there, and in response to that—I

not knowing anything about the facts at all—this affidavit came on from the general passenger agent of the Baltimore & Ohio Railroad. Did you speak to Mr. Schoonover about that?

Mr. MOODY.—No, I did not.

Mr. McNAB.—Is he in town?

Mr. MOODY.—He is here now.

Mr. McNAB.—I would like, before the hearing is concluded, to consult him in regard to it.

Mr. MOODY.—Well, I will object to it if he does not expressly waive it, because it is the same proposition I have offered in evidence, which was turned down, and counsel proposes the same kind of evidence and asks that it be admitted.

Mr. McNAB.—No, it is not admissible, but if yours is admitted for any purpose this is admissible for as much.

The COURT.—Well, "as much." Let us see what it is. [202] It has not been admitted for very much.

(Document handed to Court.)

Mr. DOCKWEILER.—I understood Mr. Schoonover was to investigate those dates and the passenger agent's records, because if the facts stated in that affidavit are true they are absolutely corroborative of the witness' statement with respect to the departure of his father on the last occasion for China.

Mr. McNAB.—I frankly stated to the Court that that is not admissible in evidence, but I asked the United States Attorney if he would kindly investigate it and admit it as a fact at the hearing.

(Testimony of Yee Chung.)

The COURT.—Well, if he does, all right and good; and if he does not, all right and good.

Mr. McNAB.—It is directly confirmatory of what the witness testified to.

The COURT.—All right. Proceed.

Q. (By Mr. MOODY.) Do you remember the date, November 17, 1909, when you were landed from the steamer "Manchuria" in San Francisco?

The INTERPRETER.—What date?

Mr. MOODY.—November 17, when he was examined by Inspector Long.

A. Yes, I remember that occurrence.

Q. And I will ask you if at that time this question was asked you and you made this answer: "Q. When did you depart [203] for the first time? A. When I was two years old with my father, and returned K. S. 23, the eleventh month, on the 'Empress of Japan,' arriving at Vancouver, and went to Burlington, Vermont."

A. Yes, sir, I did testify to that, but I don't exactly remember that I was testifying the "Empress of Japan" or the "Empress."

Mr. McNAB.—What is K. S. 23, Mr. Brazie?

Mr. Brazie.—1897.

Mr. McNAB.—(After conference with Mr. Schoonover.) With regard, if your Honor please, to the matter we were just discussing, this affidavit, Mr. Schoonover tells me that he was so busy that he did not have an opportunity to prosecute that investigation, and for that reason is not prepared to admit anything; therefore I think, very clearly, it is not admissible in evidence.

(Testimony of Yee Chung.)

The COURT.—It becomes, then, one of the closed incidents of the case.

Mr. McNAB.—I am sorry to say so.

The COURT.—And if it was admitted I would have sustained an objection on the ground that it is immaterial. It does not make any difference what became of Yee Kim Sing; the only question is whether Yee Kim Sing was this man.

Mr. McNAB.—It was only corroborative of his general statement with regard to his movements.

The COURT.—Well, it is out of the case. Go on.

[204]

Q. (By Mr. MOODY.) Do you remember in the same year, 1909, in November, on the 12th day, Inspector Mayer examining your relative to your right to re-enter the United States?

A. I remember the occurrence, but the date—I think I remember some of them.

Q. I will ask you if at that time and place you were not asked this question and did not make this answer: "Q. About how long did it take you to go from Vancouver to Montreal? A. Five or six days." A. Yes.

Q. And this question: "Q. How long did you stay in Montreal? A. Over night."

A. Not that. Several days; three or four days.

Q. You did not make that statement at that time?

A. No.

Q. And did you answer to this question as follows: "Q. How did you get out of Montreal? A. I boarded a train to Burlington. Q. Did you go

(Testimony of Yee Chung.)

straight to Burlington from Montreal without changing? A. Changed once. I don't remember at what place."

A. Yes.

Q. I will ask you if you remember on March 4, 1914, when you were being examined relative to your right to get a return certificate and re-enter the United States March 4, 1914, to Mr. Joseph H. Scully being the Inspector? A. Yes. [205]

Q. I will ask you if at that time and place, with the interpreter Lum J. Ying and the stenographer, A. A. Gilberts, you were not asked this question and made this answer: "Q. Have you any documentary evidence other than that which you have already presented, or any witnesses who can testify that you were born in the United States? A. I had papers that were lost during the wreck of the 'Dakota' and I have no witnesses who can testify for me now."

A. Yes, I did so testify, because I could not produce any witnesses then.

Q. I will ask you if at that time and place this question was asked you and you made this answer: "Q. What kind of papers were lost? A. A court record from Burlington. Q. Any other papers? A. No." A. Yes, sir.

Q. "Q. Was your photograph on the court record that was lost? A. With a picture attached."

A. Yes, sir.

Q. "Q. You have no other evidence, no witnesses? A. No."

A. Well, because I was required to produce evi-

(Testimony of Yee Chung.)

dence and witnesses at that very moment, and I couldn't get any then.

Mr. MOODY.—I object to the explanation and move to strike it out and ask him if he answered that question that way.

The COURT.—Yes, it will be stricken out. Ask him if he testified in that form—or gave that answer. [206]

A. I replied that I could not produce them then, but I explained the matter to him.

Mr. MOODY.—I insist upon an answer yes or no as to whether you gave that answer to that question.

The COURT.—You are not entitled to an answer yes or no unless it can be so answered.

Mr. MOODY.—I asked him if he made that answer, your Honor, and he can tell me now yes or no, whether he made the answer or not. I want to find out whether or not he made that answer.

The COURT.—Yes. Read it again and ask him if he made that answer. Did he or did he not?

(Question reinterpreted.)

Yes.

Q. (By Mr. MOODY.) Now I will ask you if at your hearing before United States Commissioner Charles N. Williams in this city and in this building on August 6, 1914, and the continuances thereof—I don't remember whether this was the 6th or 7th—this question was asked you and you made this answer (p. 71 of the record): "Q. And to what part of China did you go? A. To Sun Ning, Chew Choy village." A. Chew Duey, yes, sir.

(Testimony of Yee Chung.)

Q. Ask him if he said Chew Choy was the village at that time? A. No, I said Chew Duey. [207]

Mr. McNAB.—Might I ask an admission at this time that these names, like the names of individuals, are spelled phonetically—by sound?

Mr. MOODY.—I have no objection to admitting that these names are spelled phonetically, but I do not admit that there can be the discrepancy there appears between these two names by a phonetic pronunciation and spelling.

Mr. McNAB.—Between Chow Duey and Chew Duey?

Mr. MOODY.—Chew Choy.

Mr. McNAB.—Your Chinese is not as excellent as your English.

Mr. MOODY.—I asked him if he stated that was the village he went to, Chew Choy,—call it what you may.

The COURT.—Well, he said no. Some of you gentlemen who have spent a good part of your lives in China—is there such a village as Chew Choy or Chew Duey?

The INTERPRETER.—I take the witness' own dialect, Chew Duey.

The COURT.—Well, is there a Chew Choy village in China?

The INTERPRETER.—Well, I don't know; I left there so long ago.

Mr. MOODY.—He testified it was only a village of one hundred people.

Mr. DOCKWEILER.—Mr. Gintchee was the in-

(Testimony of Yee Chung.)

terpreter on that occasion and he is here now, and Gintchee has just whispered in my ear that if there were ten interpreters in a case each [208] interpreter would probably give a different inflection, or, in interpreting, would spell it different.

The COURT.—Well, we are very thankful, then, that we are going to have only one in this case.

Q. (By Mr. MOODY.) On page 72 of the transcript, and at the same time, I will ask you if these questions and answers were made: "Q. Then from Vancouver where did you go? A. After *landing the* 'Emperor of Japan' in Vancouver, then take the rail direct to Burlington, Vermont, where my father intended me to meet him."

The INTERPRETER.—What date is that?

Mr. MOODY.—The 6th or 7th of August, 1914.

A. No.

Q. You made that statement and answer—or that answer was not made? A. No.

Q. Then on page 73, at the same time and place: "Q. Well, then, after being arrested, what was done with you? Were you put in jail? A. After I was arrested and charged in custody my father came and bailed me out, and next day was to go before the United States Court." A. Yes.

Q. Now, I will ask you if you remember the time on July 14, 1914, when you were arrested by Inspector Brazie in this city and examined by him, with Charley Levy as the interpreter? [209] A. Yes.

Q. I will ask you if at that time you did not answer to the question: "Q. What village did you marry in?

(Testimony of Yee Chung.)

A. Chow Duey village, Sun Ning District."

A. Chew Duey, yes.

Mr. McNAB.—That is where he was married?

A. Yes, sir.

Mr. DOCKWEILER.—Now, Mr. Interpreter, Mr. Moody says Chow Duey, and then your reply is Chew Duey. Is there any difference?

The INTERPRETER.—Well, there is the dialect spoken by so many Chinese in different sections of the country, and then if the interpreter pays particular attention to the sound that the witness uttered, then there would be only one; but the interpreter to use his own dialect, it would be different.

Mr. DOCKWEILER.—Well, what did he say, Chew Duey or Chow Duey?

The INTERPRETER.—Chew Duey, yes.

Mr. McNAB.—Do you understand the question that you asked him was whether he said he was married there?

(Interpreted.)

A. Yes, sir.

Q. (By Mr. MOODY.) I will ask you if you were asked this question: "Q. How many trips have you made to China? A. You make too much trouble. I don't want to talk to you [210] any more."

A. Yes.

Q. And this question: "Q. You stated you were born in San Francisco. What evidence have you of that? A. I had a native paper kept by my clansmen in San Francisco. I have to write to them about it now." A. Yes.

(Testimony of Yee Chung.)

Q. "Q. Where is this paper? A. I don't know who keeps my paper now. I will have to send a letter there to find it." A. Yes.

Q. "Q. Where did you get this native paper you speak of? A. I was born in San Francisco. I got it from San Francisco."

A. I said that the paper was kept by my clansmen, that I have to find out.

Q. Did you say: "I was born in San Francisco; I got it from San Francisco"? A. No.

Q. "Q. Did you go to China on that paper? A. Yes."

A. No, sir. I said I went to China with a paper I got in—I got it from Vermont.

Q. Well, I want to know if he made that answer that I read here.

A. I don't remember exactly what were the questions and my answers. [211]

Q. "Q. Where did you go from? A. I don't want to say anything."

A. I said I was going to San Francisco.

Q. "Q. When did you return from China? A. I don't remember."

A. No, sir. I told him that I arrived here on the steamship "Manchuria" on the third day of the ninth month.

Q. You didn't make this answer that I have read, then? A. No.

Q. "Q. Where did you land on your return? A. I was born in this country, and you have no right to bother me. I go anywhere I please." A. Yes.

(Testimony of Yee Chung.)

Q. "Q. Where did you land upon your return from China? A. San Francisco."

Mr. McNAB.—Is it contended that that is not true?

Mr. MOODY.—I contend that a great many of these statements that are made in here are not the truth.

Mr. McNAB.—Do you contend that statement is not the truth?

Mr. MOODY.—I am reading that statement to get the connection between that statement and the one that is to follow,—to give the witness the connection between that statement and the one that is to follow.

The COURT.—Proceed.

Q. (By Mr. MOODY.) "When did you land at San Francisco? A. I don't remember." [212]

A. Of course I don't remember the exact date.

Q. "Q. What steamer did you come on? A. I don't remember."

A. I told him it was the steamer "Manchuria."

"Q. Were you examined by immigration inspectors when you landed? A. I don't like to talk."

A. Well, because I was questioned so much about this matter, and then I saw there was no fairness to me, and then I refused to answer so many questions.

Q. Was this question and answer made: "Q. Did you show your native paper to anyone when you landed? A. No. No inspectors bother me while I travel around. You are the only one who come to bother me." A. No.

Q. "Did any inspector ever see your native paper?

(Testimony of Yee Chung.)

A. I don't want you to ask me such a question. I don't remember at all."

A. No, I didn't say that.

Q. "Q. Have you any papers to produce showing your right to be and remain in the United States? A. No." A. I told him I had papers.

Mr. MOODY.—That is all. [213]

Redirect Examination.

(By Mr. McNAB.)

Q. Do you remember that it was this Mr. Brazie sitting at the table here that asked you these questions in Los Angeles?

Mr. DOCKWEILER.—Stand up, Mr. Brazie.

(Mr. Brazie stands.)

A. Yes.

Q. (By Mr. McNAB.) Now, what were the circumstances of this man having you at this office at this time? How did he happen to take you there?

A. He arrested me; took me up there saying that I had no paper here.

Q. Where did he take you, do you remember?

A. Up to his room.

Q. Did you have any friend or lawyer present?

A. No, sir; only he and that man there.

Q. By "that man there" you mean the Chinese interpreter sitting behind Mr. Brazie (Mr. Levy)?

A. Yes.

Q. What did Mr. Brazie tell you that he took you to this office for?

A. He said I had no certificate of residence.

Q. Now, some question was asked you about a na-

(Testimony of Yee Chung.)

tive paper. What paper were you talking about when you talked to him? **[214]**

A. He asked me whether I had a certificate of residence. I told him I had not, because I was born in the United States.

Q. Where did you tell him you were born in the United States?

A. I told him I was born in San Francisco.

Q. What paper, if any, did you tell him that you had?

A. I told him I had a paper to prove that I was born in the United States.

Q. What paper did you refer to?

A. That is the paper I obtained from Vermont.

Q. Do you mean the judgment before Commissioner Johnson in Burlington, Vermont, that you testified to when you were on the stand before?

A. Yes, sir.

Q. Now, you said this paper concerning which the District Attorney has asked you these questions makes you to say that you did not remember when you landed in San Francisco. As a matter of fact, did you land at San Francisco and pass through the immigration inspectors and were landed there in 1909? A. Yes, sir.

Q. How were you at the time this examination was being taken by this Mr. Brazie—were you angry or otherwise?

A. Well, because on my way to San Francisco, I was hauled up by him, and I was a little angry.

Q. At that time did you have with you any papers

(Testimony of Yee Chung.)

showing [215] your right to be or to remain within the United States? A. No.

Q. Did you have with you when you returned from China the paper showing your right to be in the United States? A. Yes, sir.

Q. Where had you left that paper?

A. Why, the paper was taken up from me when I presented my application to go to China.

Q. And what year was that?

A. It was in the second month of last year.

Q. What did you mean by saying, as this paper says you stated, that you had no witnesses when they asked you on the hearing whether you had any witnesses?

The INTERPRETER.—That is in San Francisco?

Mr. McNAB.—Yes.

A. I was required then and there to produce witnesses and other evidence. I told him I could not then.

Q. As a matter of fact had anybody before that time ever questioned your right to be in the United States since the time you were before Commissioner Johnson?

The INTERPRETER.—That is Johnson in Vermont, is it?

Mr. McNAB.—Yes.

A. No, sir.

Q. Is that the first time since the time you were released by Commissioner Johnson that anybody ever questioned your right or arrested you and charged that you had no right [216] to be in this

(Testimony of Yee Chung.)

country? A. No, sir.

Q. When you went to China in 1907 were you arrested or told that you could not go because you had no right to be in this country?

A. At the time when I returned?

Q. At the time when you went to China, in 1907.

A. No, sir.

Q. Why did you not fully answer all the questions that were asked of you by Mr. Brazie when you were arrested in Los Angeles?

A. Well, because the way that I saw there, I could get no fair treatment. I was questioned so much, and I didn't feel like to say all what I should like to—or that I would otherwise say.

Mr. McNAB.—That is all.

Recross-examination.

(By Mr. MOODY.)

Q. In what way were you treated unfairly in this hearing?

A. That is what I heard; the reputation; that they always denied your right.

Q. Well, how were you treated unfairly up here at this time that you claim Mr. Brazie treated you unfairly?

A. Because I was taken there into a small room. I was **[217]** there myself, alone.

Q. You were given an opportunity to tell the truth, were you not? A. He said so; that is all.

Mr. MOODY.—That is all.

(Examination by the COURT.)

Q. If I remember your testimony at the other

(Testimony of Yee Chung.)

hearing correctly, you said you came from China to Vancouver on the "Emperor" or "Empress of Japan" in 1897.

A. As I remember. I think I said that "one of the Empresses"—of the steamers.

Q. Well, it was the "Empress of Japan," was it not?

A. I believe I only said "one of the Empress steamers."

Q. When you bought that ticket in China did you give your name to anybody?

A. I bought the ticket at one of the stores in Hong Kong.

Q. I didn't ask you that. I asked you if when you bought that ticket you gave your name to anybody.

A. No; I bought it because at that time those stores in Hong Kong—

Q. I didn't ask you that at all. Tell him I didn't ask him that. I asked him if when he bought his ticket he gave his name to anybody.

A. I told my name, but they said that the ticket was **[218]** from the store, because each store has a certain number of tickets for sale.

Q. Who did you tell your name?

A. The store where I stayed.

Q. Where you bought your ticket?

A. Yes, sir.

Q. What name did you tell them was yours?

A. I told the party that my name was Yee Chung, and they said, "All right; that will do."

(Testimony of Yee Chung.)

Q. Yee Chung?

A. Yee Chung. And then I was told to take this paper along with the boat—or on the boat.

Q. Did you tell your name to anybody on the boat?

A. No, I was never questioned on board the ship.

Q. When you got to Vancouver did anybody ask you what your name was?

A. I showed them the paper.

Q. I didn't ask you that.

A. And I showed them the railroad ticket.

Q. I asked you, when you got to Vancouver did anybody ask you what your name was? A. Yes.

Q. Who asked you what your name was?

A. The Chinaman there asked us where we were going.

Q. You said somebody asked you there what your name was, and I asked you who that was. Can you answer that? **[219]**

A. There was a Chinaman attending to the passengers there.

Q. And did he ask you what your name was?

A. Yes, sir.

Q. What Chinaman was this?

A. I don't remember his name, but simply that he was a Chinaman working there, is all.

Q. Was he in the company of some white man?

A. Yes, there was white men.

(Last question read.)

Q. This Chinaman who asked you your name.

A. Yes.

(Testimony of Yee Chung.)

Q. Was he asking other Chinamen for their names in your presence?

A. At that time we were divided. Some was going to the British land on one side, and those who came to the United States on the other side.

Q. I asked you if he was asking other Chinamen for their names at or about the time he was asking you for your name.

A. I didn't hear him.

Q. You didn't hear him ask any other Chinamen for their names? A. No.

Q. How did he come to ask you for your name? What were the circumstances? **[220]**

A. I was asked, "Where does your railroad ticket entitle you to go to?" I told him "To Boston."

Q. What name did you give him?

A. I was not asked my name. I was asked *what* I was going.

Q. You say you were not asked *where* your name was? A. No, sir.

Q. Didn't you say awhile ago that a Chinaman asked you what your name was?

A. No; the Chinaman asked me where do my papers entitle me to go.

Q. Yes; but I asked you awhile ago if the Chinaman asked you what your name was, and I understood you to say that he did.

A. I didn't understand that, Judge.

Q. So no Chinaman asked you what your name was? A. No.

Q. Did anybody ask you what your name was, at

(Testimony of Yee Chung.)

Vancouver? A. No, sir.

Q. Did you hear any of the Chinamen there asked what their names were?

A. No, I didn't hear that at all, except that I was asked where I was going, that is all, and then I passed.

Q. And you didn't give anybody there your name?

A. No. I was not asked for my name. **[221]**

Q. Were you asked your age? A. Yes.

The COURT.—(To Interpreter.) Did he answer "Yes"?

The INTERPRETER.—(After reinterpreting.) Oh, no. I was not asked for my age.

Q. (By the COURT.) Were any other Chinamen there in your presence asked their ages?

A. I didn't know of that.

Q. How many Chinamen were on the boat you came over on?

A. Well, there were quite a number of men there; I don't know the exact number.

Q. How many Chinamen?

A. Well, quite a number. A big number of Chinamen there. I don't know exactly the number.

Q. A hundred or so? A. Yes.

Q. Did you at any time when you were on the boat or while you were at Vancouver hear any of those Chinamen asked as to what their names or ages were? A. I don't remember that I did.

Q. But you are positive, are you, that you were not asked for your own name or your own age?

A. Yes.

(Testimony of Yee Chung.)

The COURT.—That is all.

Mr. MOODY.—That is all.

Mr. McNAB.—That is all. Now, if the Court please, **[222]** I should like to ask for the introduction of pages 71 to 73, inclusive, of the transcript before the Commissioner at which Mr. Gintchee acted as interpreter for the Chinese defendant and Chinese witnesses.

Mr. McNAB.—Did you read all of this?

Mr. MOODY.—We read all of it except the parts that absolutely agree with what he says here. I didn't read that.

Mr. McNAB.—We have no objection. Shall I read it to the Court?

Mr. MOODY.—I do not think it is necessary. But any part you want to read in the argument, it will be satisfactory to us.

The COURT.—How many pages?

Mr. MOODY.—I am introducing three pages—71 to 73 inclusive.

The COURT.—Well, I don't want to determine this case without looking over this record, so I suggest that you give it to the reporter and have him copy that portion of it in the record.

(The said three pages are in the words and figures following, to wit:)

"A. Chinese groceries. Q. Chinese groceries? A. Yes. Q. And how long did you remain in San Francisco after you were born? A. I remained in San Francisco about two years and then went to China. Q. Whom did you go to China with? A.

(Testimony of Yee Chung.)

My father and mother and myself, the three. Q. And to [223] what part of China did you go? A. To Sun Ning, Chew Choy village. Q. What province or canton? A. Kwong Tung province. Q. How long did you remain in China? A. I went back to China at two year old and returned to the United States at eighteen. Q. Eighteen? Mr. Archbald. What year? Mr. Dockweiler.—Eighteenth year. The Witness.—Yes. Q. At what year did you return? A. Kong Suey 23 year, the last part of the year. Q. On what boat did you come back, if you remember? A. 'Emperor of Japan,' way of Vancouver. Q. 'Emperor of Japan?' A. By way of Vancouver. Q. Did you land at Vancouver? A. Yes, landed in Vancouver. Q. Then from Vancouver where did you go? A. After landing the 'Emperor of Japan' in Vancouver, then take the rail direct to Burlington, Vermont, where my father intended me to meet him there. Q. You went to Burlington, Vermont? The Interpreter.—Where his father meet him there. Q. 'Where my father met me,' is that right? A. Yes, my father intended to meet me. Q. At the time you started from China where did you understand your father was then living? A. Why, before I left China I understood my father at Boston, because he sold the business in San Francisco and went to Boston for that other business. Q. Then when you started from China your father was in Boston then? A. Sang Sing & Company, Boston, doing Chinese general grocery or merchandise, Chinese store. [224]

(Testimony of Yee Chung.)

Q. Did anything happen to you on this trip before you reached Burlington, Vermont, and if so, what was it? A. Why, when I reached on the boundary line between Canada and the United States I was told that I can't go through. I have to be examined in that division. Q. 'I had to' what? A. Be examined. Q. 'I had to stand an examination,' is that it? A. Yes. Q. Do you know the name of the town on the boundary line that you went through in coming into the United States? A. I don't remember that now; I don't remember the name of that town. Q. Well, were you arrested in Vermont, and if so, about when? A. At that time I was a stranger in that direction; I couldn't remember the name, but all I know is they arrested me between the boundary line of Canada and United States, somewhere along there. Q. Well, then, after being arrested, what was done with you; were you put in jail? A. After I was arrested and charged in custody my father came and bail me out and the next day was to go before the United States court. Q. Before the United States court at what town; at what town? A. Burlington. Q. Burlington, Vermont? A. Vermont. Q. Now, why were you arrested, as you understood it? A. On this side is United States and the other side is Canadian, and Chinamen comes over here he has to be held up and examined." **[225]**

Mr. MOODY.—I notice in reading the transcript that there are a good many places where things are mentioned in the transcript to be included that are not in there, and I suppose that is because the rec-

(Testimony of W. A. Brazie.)

ords were sent back to San Francisco before they got in there. For instance, there are two circulars that were admitted after strenuous debate here; they do not appear anywheres in there; and there are certain lines of certain other documents that were used on cross-examination that were admitted and they do not appear.

Mr. McNAB.—Well, this is the transcript before the United States Commissioner?

Mr. MOODY.—Yes.

Mr. McNAB.—Is that the transcript you refer to as not included? I do not remember that those circulars were admitted. We were anxious to show that the action of Commissioner Edsall was based upon some new circular or regulation that had been issued, and I do not understand they went into evidence. I don't care one way or the other.

The COURT.—The only thing I remember now is that I stated—or at least I felt—that this Court was not going to be circularized in any decision of this case by any other department of the Government but that we were going to try to determine it upon our own responsibility.

Mr. McNAB.—Your Honor so states in the transcript just as your Honor now puts it. [226]

Testimony of W. A. Brazie, for Plaintiff (Recalled).

W. A. BRAZIE, a witness recalled on behalf of the Government, having been first duly sworn, testified as follows:

(Testimony of W. A. Brazie.)

Direct Examination.

(By Mr. MOODY.)

Q. On the 14th day of July, 1914, did you examine the defendant in this case, Gee Chung, respecting his right to remain in the United States?

A. Did you take a statement from him at that time? A. I did.

Q. Who acted as interpreter?

A. Charley Levy.

Q. I show you a statement here and ask you if that is the statement containing the questions and answers as you received them from him through the interpreter (handing document).

A. That is a correct transcript.

Q. Did you make that typewritten copy?

A. Yes, sir, I did.

Q. And you know it to be correct in all particulars? A. Yes, sir.

Q. At that time did you treat the defendant in a harsh, unseemly manner? A. No.

Q. Did you give him all the consideration that a gentleman is entitled to? [227]

A. I did. He was there for the purpose of being shown—

Mr. McNAB.—That is not in answer to the question.

The COURT.—Yes, answer the question. Did you or did you not?

Q. (By Mr. MOODY.) I asked you if you gave him due and courteous consideration. A. I did.

Mr. DOCKWEILER.—Your question was, "all

(Testimony of W. A. Brazie.)

the consideration he was entitled to."

Q. (By Mr. MOODY.) Very well, all the consideration he was entitled to?

Mr. McNAB.—That is objected to as calling for a conclusion of the witness.

The COURT.—The objection is sustained.

Mr. MOODY.—I offer this statement in evidence, your Honor.

Mr. McNAB.—I have no objection to those portions which were read to the witness being introduced in evidence.

The COURT.—Those are all that are material.

Mr. MOODY.—Those are all that are material, and I read all the ones except those which are not material and which are in no wise contradictory to the ones now made by the witness.

The COURT.—You may mark those asked, and those will be admitted.

Mr. MOODY.—Well, I read pretty near everything in here, [228] your Honor.

The COURT.—Well, then pretty near everything will be admitted, if that is the case.

Mr. MOODY.—If counsel will show me which ones—

Mr. McNAB.—I didn't have an opportunity to see it, Mr. Moody; you will have to depend upon your recollection.

Mr. MOODY.—I will attempt to repeat the questions I have referred to and let the reporter copy them.

The COURT.—How much of it is there?

(Testimony of W. A. Brazie.)

Mr. MOODY.—There are three pages of it. I quoted pretty nearly everything in there. There are only a few questions that I did not ask.

The COURT.—Well, the reporter, when he comes to copy it, can tell which ones are admitted, and he can put in those on which he was examined. Let the reporter take it,—that is what he is paid for.

Mr. DOCKWEILER.—Well, put the whole thing in.

(Whole document filed as Exhibit ——.) [229]

Cross-examination.

(By Mr. McNAB.)

Q. Are you an immigrant inspector?

A. Yes, an immigrant inspector.

Q. Where did you arrest Gee Chung?

A. At River Station of the Southern Pacific Railroad Company.

Q. From there where did you take him?

A. To the immigration offices.

Q. What did you tell him when you arrested him?

A. I asked him if he had a certificate?

Q. What did he say? A. He said no.

Q. What else did you ask him before you took him up to this room?

A. I don't know as I asked him a great deal of anything.

Q. Now, did you take this down in shorthand?

A. I did.

Q. Where was this room?

A. It is the examination room in the Immigration Service.

(Testimony of W. A. Brazie.)

Q. Who was present with you—anybody besides the interpreter? A. No one.

Q. Do you speak Chinese? [230] A. No, sir.

Q. Do you understand Chinese when it is spoken?

A. No, sir.

Q. Then you would simply take down what the Chinese interpreter gave to you? A. Yes, sir.

Q. Was this defendant angry?

A. Well, no, I can't say that he was.

Q. Well, now, didn't you say afterward that he was very angry? A. Did I say—

Q. Yes, didn't you say to Mr. Dockweiler that he was very angry? A. No, sir, I did not.

Q. Did you say that to anybody? A. No, sir.

Q. Well, was he angry?

A. Well, he was more or less excited, but I did not consider him what you would call angry, no. He objected to being under restraint, of course.

Q. He objected to being under restraint?

A. Yes.

Q. And when he said to you certain things to the effect that "I don't remember," and so on, was he not in a petulant and excited mood?

A. He was not in an excited mood, no. I explained to [231] him why he was there.

Q. Didn't you afterwards say, "If this man had presented this record I would have released him"?

A. No, sir.

Q. You did not?

A. I said we would have investigated him on the record; that we would—

(Testimony of W. A. Brazie.)

Q. How long did you keep him up in this room?

A. Well, I couldn't say exactly. He was not there over—well, not over three-quarters of an hour. I didn't time myself, but guessing at it.

Q. Did you commence the examination as soon as you took him into the room? A. I did.

Q. And kept at it steadily until you got through?

A. Yes. Well, now, if you will notice, that examination is taken on two different days. The first two pages I examined him and—

Q. How long a time did you put in the first time?

A. Not over three-quarters of an hour, I don't think.

Q. Then what did you do with him?

A. Placed him in the county jail of Los Angeles.

Q. How long did you keep him in jail?

A. Over night.

Q. What did you do with him next?

A. I went to him and asked for a statement from him again [232] to verify this matter.

Q. What did he say? A. It is in the statement.

Q. Was he angry?

A. No, he wasn't angry next day; he was perfectly cool next day.

Q. He had a chance over night to cool off, did he?

A. I suppose so.

Q. Well, have you recorded in this examination all the conversation that took place between you and him at the county jail? A. Yes, sir.

Q. You took the interpreter with you to the county jail, did you?

(Testimony of W. A. Brazie.)

A. Yes, sir, the second statement was taken at the county jail.

Q. And this examination was taken in a cell in the jail? A. No, he was brought downstairs.

Q. Into what room?

A. Into one of those consultation rooms there. I don't remember just exactly which one.

Q. Did he ask to see any lawyer or friend?

A. No, sir.

Q. He stated to you that he was not going to talk to you any more, didn't he? A. That is about it. [233]

Q. He stated that you had no right to ask him any of these questions? A. Words to that effect.

Q. He stated to you that you were the first inspector that ever arrested him, did he?

A. He stated that to me up at the Immigration Office.

Q. Well, you knew, did you not, at that time, that he had actually returned from China and entered at the port of San Francisco?

A. No, sir, I did not. The first I ever knew of that was when that paper was produced at the trial before the Commissioner.

Q. You just simply took a flying chance and arrested him because he had no certificate with him?

A. We take that flying chance with all Chinese laborers who have no certificates.

Q. Was he not at that time just about to get on the train? A. I couldn't tell you.

Q. Well, he was at the River Station, was he not?

(Testimony of W. A. Brazie.)

A. He was at the River Station, yes, sir.

Q. About what time of the day?

A. About half-past three, I should judge.

Q. What train, do you know, was going out about that time or about due to depart?

A. The next train to San Francisco due at that time [234] 7:30 P. M.—leaving the Arcade Station at 7:30 P. M.

Q. Did you say there was no train until after 7 o'clock?

A. Not to San Francisco. The next train was No. 49 leaving the Arcade Station—that stops at River Station, I mean; it leaves River Station at 7:30.

Q. What was he doing at the time you arrested him there? A. Sitting in the depot.

Q. In the waiting-room?

A. In the waiting-room.

Q. And other Chinese with him? A. No.

Mr. McNAB.—That is all.

Mr. MOODY.—That is all. [235]

Testimony of Charlie Levy, for Plaintiff.

CHARLIE LEVY, a witness called on behalf of the Government, having been first duly sworn, testified in English, as follows:

Direct Examination.

(By Mr. MOODY.)

Q. You heard the statement, Mr. Brazie, that you were present and acted as interpreter at a statement taken on the 14th and 15th of July?

A. Yes, sir.

(Testimony of Charlie Levy.)

Q. Did you correctly interpret all questions and answers at that time? A. Yes, sir.

Q. And correctly interpreted them to the Chinese person and interpreted back into English his answers to Mr. Brazie? A. Yes, sir.

Mr. MOODY.—That is all.

Cross-examination.

(By Mr. McNAB.)

Q. What Chinese dialect do you speak?

A. The Sun Ning dialect.

Q. What dialect does Yee Chung speak?

A. The Sun Ning dialect.

Q. He came from the same part of China?

A. The same district. [236]

Q. The people of that district speak in the same dialect, do they? A. Yes, sir.

Q. How do you pronounce the name of the village that he said he was married in?

A. Cho Duey village is what he said.

Mr. McNAB.—He says Chow.

Q. How do you spell it?

A. Well, spelling it out in English makes it a little different sound; but it is pretty hard to get the correct spelling. The sound is just like you would hear a fellow speak. Chew Duey—I spell it C-h-e-w D-o-e-y,—or D-u-e-y—either way.

Q. Did you spell this out for Mr. Brazie?

A. I don't remember that.

Q. Well, when you give the name of a village in China when Mr. Brazie is examining anybody do you spell it out for him?

(Testimony of Charlie Levy.)

A. Well, sometimes the inspector wouldn't catch the sound and the interpreter maybe will repeat and spell it out. If the inspector catches the sound he don't need the interpreter to spell it out for him.

Q. Well, very often the inspector has to ask you over again to spell it for him, does he not?

A. At that time I did. I think I spelled it out for him. [237]

Q. You think you spelled it out for him?

A. I think I did, but I don't remember exactly.

Q. How did you spell it?

A. C-h-e-w D-o-e-y I think I spelled it at that time.

Q. Well, this is spelled C-h-o-w.

A. Well, that may be.

Q. Now, as a matter of fact, in all these names the spelling varies in nearly every case; no two people spell them alike when they hear them, do they?

A. No; it is hard to find them spelling them both alike.

Q. Do you know where the village of Chow Duey, or Cho Duey, is? A. No.

Q. Do you know where any of these villages are that have been mentioned here? A. No, sir.

Q. There are thousands of little villages in that province that you came from, are there not?

A. That may be; I don't know, myself.

Q. Where did you come from?

A. The Sun Ning district.

Q. But what village? A. Ngin On village.

Q. How do you spell it?

A. N-g-i-n O-n. That is the way I spell it.

(Testimony of Charlie Levy.)

Q. Is it mentioned on any map anywhere in China?

[238] A. I haven't seen it on the map myself.

Q. Ngin On—Chinese always translate that into English N-g, don't they?

A. N-g is "ng" (pronouncing phonetically).

Q. Well, how do you pronounce it?

A. "Ngin" (pronouncing phonetically) is the way I pronounce it.

Mr. MOODY.—That is all. No more testimony.

Mr. McNAB.—That is all. That is our case.

Mr. MOODY.—Does your Honor wish to proceed with the argument now?

The COURT.—Yes.

(Oral arguments.)

Adjournment. [239]

U. S. Exhibit No. 2—Records of U. S. Commissioner in Re Yee Chung—Certified Copy of Docket Entries.

PT. S. F. File 12017/2844.

United States of America,
District of Vermont,—ss.

To Geo. E. Johnson, Esq., United States Commissioner, within and for the District of Vermont, comes John H. Senter, United States Attorney in and for the District of Vermont, and on his oath of office complaint makes that Yee Chung late of Canton, China, heretofore, to wit: on the 28th day of December in the year of our Lord one thousand eight hundred and ninety-seven, at Richford, in the County of Franklin, in the State and District of Ver-

mont aforesaid, and within the jurisdiction of this court, was then and there a Chinese person, that is to say, a person of Chinese descent, unlawfully and without right within the United States, that is to say, at Richford aforesaid, contrary to the form, force and effect of the Statute of the United States in such case made and provided, and against the peace and dignity of the United States.

JOHN H. SENTER,

United States Attorney for the District of Vermont.

The foregoing complaint was exhibited to me this 31st day of December, A. D. 1897, and process then issued.

GEO. E. JOHNSON,

United States Commissioner for the District of Vermont. [240]

United States of America,
District of Vermont,—ss.

The President of the United States to the United States Marshal, Within and for the District of Vermont, or Either of His Deputies: Greeting:

BY THE AUTHORITY OF THE UNITED STATES OF AMERICA, You are hereby commanded to arrest the body of the said Yee Chung if to be found within your precinct, and have him forthwith before the subscribing authority at the office of Geo. E. Johnson, in Burlington in the District of Vermont aforesaid, that he may answer the foregoing complaint and be further dealt with according to law.

Given under my hand, at Burlington, in the County of Chittenden, in the State and District of

Vermont, this 31st day of December, A. D. 1897.

(L. S.) GEO. E. JOHNSON,

United States Commissioner for the District of Vermont.

United States of America,
District of Vermont,—ss.

At Richford, in said district, on this 1st day of January, A. D. 1898, by virtue of the within warrant, I arrested the body of the within named Yee Chong and read the same in his hearing, and now have him here in Court as within commanded.

Attest, EMERY S. HARRIS,
U. S. Marshal, for the Dist. of Vermont.
By James A. Kelley,
Deputy.

FEES:

Serving warrent	2.00
Transport Prisoner 62 miles	6.20
Discharge defend	.50
1 days attendence	2.00
	10.70

[241]

[Endorsed]: 121. United States versus Yee Chung. Complaint and Warrant. Filed this 31st day of December, A. D. 1897. Geo. E. Johnson, U. S. Commissioner for the Dist. of Vermont. Returned served January 3, A. D. 1898. Geo. E. Johnson, U. S. Commissioner. Heard Jny. 8. Dischged Jany. 19.

UNITED STATES DISTRICT COURT,
DISTRICT OF VERMONT,
CLERK'S OFFICE.

I hereby certify that the foregoing is a true copy of the original complaint and warrant of arrest in case United States vs. Yee Chung, with the officer's return thereon and the filing thereon, returned into Court by former U. S. Commissioner, George E. Johnson, at the expiration of his term of office, and now remaining in this office.

WITNESS MY HAND and the seal of said Court at the City of Rutland, in said District, this 20th day of August, A. D. 1908.

[Seal] FREDERICK G. SWINNERTON,
Deputy Clerk.

[Endorsed]: United States District Court, District of Vermont. United States vs. Yee Chung. Certified Copy of Complaint and Warrant. [242]

UNITED STATES

vs.

YEE CHUNG.

District Attorney.
Deputy Kelley in attendance.
Foster, D. J.

1897.

Dec. 31. Filed complaint of United States Attorney for violation of Chinese Exclusion Acts.

" " Issued warrant of arrest.

1898.

Jan. 3. Warrant of arrest returned served, and respondent in Court.

" " Hearing continued until future date to be hereafter fixed.

" 8. Hearing.

" 19. Respondent discharged.

UNITED STATES DISTRICT COURT,
DISTRICT OF VERMONT,
CLERK'S OFFICE.

I hereby certify that the foregoing is a true copy of the docket entries in case of United States vs. Yee Chung, as appears by the dockets of former U. S. Commissioner, George E. Johnson, which were returned into Court by him at the expiration of his term of office, and now remaining at this office.

WITNESS MY HAND AND THE SEAL of said Court at the City of Rutland in said District, this 20th day of August, A. D. 1908.

[Seal] FREDERICK G. SWINNERTON,
Deputy Clerk. [243]

[Endorsed]: United States District Court, District of Vermont. United States vs. Yee Chung. Certified Copy of Docket Entries. 911–Crim. U. S. Dist. Court, So. Dist. Cal., So. Div. U. S. vs. Yee Chung. U. S. Exh. 2. Filed Apr. 3, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy. [244]

U. S. Exhibit No. 1—Certified Copy of Record of Immigration Inspector in Re Yee Shing.

Form 551. Inclosure 2524 from U. S. Department of Labor Immigration Service, Port of ——. 14–756. Gen. No. 16. No. 53867/9 El Paso. Department of Labor, Washington, D. C., March 17th, 1915.

I HEREBY CERTIFY THAT THE ANNEXED IS A TRUE COPY OF THE ORIGINAL certificate dated March 8, 1915, signed by John L. Surbrick, Inspector in Charge, U. S. Immigration Service, Vancouver, B. C., together with original record of his office relating to Yee Kim Shing.

ALFRED HAMPTON,
Acting Commissioner-General of Immigration.
(Official Title)

OFFICE OF THE SECRETARY.

I HEREBY CERTIFY that Alfred Hampton, who signed the foregoing certificate, is now, and was at the time of signing, Acting Commissioner-General of Immigration and that full faith and credit should be given his certification as such.

IN WITNESS WHEREOF, I have hereunto subscribed my name, and caused the seal of the Department of Labor to be affixed this 17th day of March, one thousand nine hundred and fifteen.

[Seal] LOUIS F. POST,
Assistant Secretary of Labor. [245]

Form 591
U. S. DEPARTMENT OF LABOR.
Immigration Service.
IMMIGRATION FILE No. 5004
772
Subject:
Vancouver File.
U. S. DEPARTMENT OF LABOR.
IMMIGRATION SERVICE.
Office of Inspector in Charge
Vancouver, B. C.
March 8, 1915.

I hereby certify that I am Inspector in Charge of the United States Immigration Service at Vancouver, B. C., and, as such Inspector in Charge, am the lawful and actual custodian of all of the official records of said office. In said capacity I also further certify that the attached record, known as Old Richford No. 2729, relating to Yee Kim Shing, merchant and member of Sam Sing Lee Kee & Co., No. 40 Harrison Avenue, Boston, Mass., was transmitted to this office, June 16, 1911, by the Commissioner of Immigration at Boston, Mass., and now constitutes a part of the official records of this office as aforesaid.

[Seal] JOHN L. ZURBRICK,
Inspector in Charge.

JFD. [246]

Office of
SPECIAL AGENT TREASURY DEPARTMENT.
Boston, Mass., September 23d, 1897.

Hon. Collector of Customs,
Boston, Mass.

Sir:—

I herewith return the paper of Yee Kim Shing, of the firm of Sam Sing Lee Kee & Co. No. 40 Harrison Avenue, who is recognized and claimed by Yee Dark Chung, Manager of the firm, as a member, having had an intereest therein of not less than $500.00 for seven years.

The witnesses to the paper recognize the photograph, and give correct name and place of business. They claim to know him by reason of having had business relations with him. The witnesses are rep-

utable citizens, and have been favorably reported on. The firm of Sam Sing & Co., has 57 partners, and carries a stock estimated to be worth $14,000.

It appears to be doing a good business, and is considered a bona fide mercantile firm. So far as I am able to judge, from inquiries made by me, the man is a merchant and entitled as such to admission into the United States.

Very respectfully,
J. B. WHITTEMORE (?),
Chinese Inspector.

[Endorsed]: 2729. *2729.* Special Agent Treasury Department ——, 189—. —— Special Agent. Subject: Yee Kim Shing. Favorable Reports. Sep. 25, 1897. [247]

I, Yee Kim Shing, on oath declare that I was born in Canton, China, on the thirteenth day of January, 1854, of Chinese parents; that in the year 1875 I came to the United States by way of San Francisco, California, where I resided nine years, during which time I was engaged in the Grocery business; from thence I came to Boston, Massachusetts, where I have resided ever since; that I am now a member of the firm of Sam Sing Lee Kee & Co., dealers in Chinese goods and other merchandise at the store numbered 40 Harrison Avenue, in said Boston; that my interest in said firm amounts to the sum of Five Hundred Dollars ($500), and that I have other personal property and debts due me from various persons in this Commonwealth amounting to the sum of Six Hundred Dollars ($600).

I further declare that I am not a laundryman or

other laborer, and that during the year last past, I have performed no manual labor other than such as was necessary in the transaction of my business as a merchant.

My present weight is 180 pounds; my height is 5 feet and 4 inches; my eyes are dark and my complexion olive; a correct photograph of myself accompanies this affidavit.

his

(Chinese characters) YEE X KIM SHING.

mark

Subscribed and sworn before me this 20th day of Sept., 1895.

[Seal] FRANCIS S. FISKE,
United States Commissioner.

(Photograph with seal impressed on back of cover.) 911—Crim. U. S. Dist. Court, So. Dist. Cal., So. Div. U. S. vs. Yee Chung. Photograph. U. S. Exh. 1. Filed Apr. 2, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy. **[248]**



We, the undersigned, citizens of the State of Massachusetts, on oath declare that we have been acquainted with Yee Kim Shing who signed the foregoing affidavit in our presence, for more than one year last past, during which time we have personal knowledge that he has not been a huckster, peddler, laundryman or otherwise engaged in skilled or unskilled labor of any kind whatsoever, but that during all our acquaintance with him he has been a mer-

chant in good standing as a member of the firm of Sam Sing Lee Kee & Co., at No. 40 Harrison Avenue, Boston. We further declare that the declaration of the said Yee Kim Shing has been read aloud in our presence, and that we recognize the photograph attached as a correct likeness.

H. M. RAND,
297 Dorchester St.,
South Boston.

JOHN E. McKENNEY,
7 Common St.

Personally appeared before me this 20th day of Sept., 1895, the above-named Rand believed and McKenney known to me to be reputable persons whose statements are entitled to full credence and belief and made oath to the foregoing.

[Seal] FRANCIS S. FISKE,
United States Commissioner.

Custom House, Tacoma, Wash. Jan. 4, 1896. Dist. Puget Sound. Seen at Tacoma, Wash., Jany. 4/96. Deported in Br. St. "Victoria." Walter Bowen, Special Deputy Collector. **[249]**

[Endorsed]: Yee Kim Shing. 2729. Sam Sing Kee Lee & Co. 40 Harrison Ave., Boston, Mass. (Chinese Characters.) 2729. (O.K. Sep. 27/97. R. C. G. Dep. Colr. Admitted Sept. 28/97. R. C. Gates, Dep. Colr.) (Underscored because uncertain.) See report in case of Chin Hing, No. 2571. Sep. 25, 1897. Sep. 10, 1897. McK. (Unintelligible figures and writing.) No. 467. U. S. vs. Yee

Chung Govts. Ex. 1. Chas. N. Williams, U. S. Commissioner.

[Endorsed]: No. 5004/772. No. 911—Crim. United States vs. Yee Chung. United States Exhibit No. 1. Filed May 21, 1915. Wm. M. Van Dyke, Clerk. T. F. Green, Deputy. Photo. **[250]**

U. S. Exhibit No. 2—Statement of Yee Chung Before Immigrant Inspector.

U. S. DEPARTMENT OF LABOR,

Immigration Service.

Office of Inspector in Charge,

Los Angeles, California.

July 14, 1914.

4:30 P. M.

5532/108.

In Re YEE CHONG.

Status Under Investigation.

W. A. BRAZIE, Inspector-Stenographer.

CHARLEY LEVY, Chinese Interpreter.

(Examining Inspector, to Alien:)

Q. You are advised that I am a United States Immigration officer, with power to administer an oath; that a statement is desired from you touching your right to be and remain in the United States; such statement to be under oath and voluntary upon your part, and may be used for or against you in court. Do you wish to make a statement? A. All right.

Q. If, at any time during this examination, you do not thoroughly understand the interpreter, you are

requested to immediately notify me of that fact.

A. All right.

ALIEN, being first duly sworn, testified as follows:

Q. What are all your names?

A. Yee Chong. Yee Ni Yook, my marriage name.

Q. How old are you? A. 35. **[251]**

Q. Where were you born? A. San Francisco.

Q. When? A. K. S. 6-1-8.

Q. What is your wife's name?

A. (Hesitates.) I was born in this country. You don't need to stop me. I want to go to San Francisco.

Q. What is your wife's name?

A. Wong Shee; 35; natural feet.

Q. Where did you marry her?

A. I married her in China.

Q. What village?

A. Chow Doey village, Sun Ning district.

Q. Is she the only wife you ever had? A. Yes.

Q. How many children have you?

A. (No answer.)

Q. How many trips have you made to China?

A. You make too much trouble. I don't want to talk to you any more.

Q. You stated you were born in San Francisco; what evidence have you of that?

A. I had a native paper kept by my clansmen, in San Francisco. I have to write to them about it.

Q. Where is this paper?

A. I don't know who keeps my paper now. I will have to send a letter there to find it.

Q. Who will you send the letter to?

A. Yee Thet, 627 Commercial Street, San Francisco.

Q. Now, tell me how many trips you have made to China? A. (No answer.) **[252]**

Q. Where did you get this native paper you speak of?

A. I was born in San Francisco. I got it from San Francisco.

Q. Did you go to China on that paper? A. Yes.

Q. Where did you go from?

A. I don't want to say anything.

Q. When did you return from China?

A. I don't remember.

Q. Where did you land on your return?

A. I was born in this country and you have no right to bother me. I go anywhere I please.

Q. Where did you land upon your return from China? A. San Francisco.

Q. What steamer did you come on?

A. I don't remember.

Q. When did you land at San Francisco?

A. I don't remember.

Q. Under what name did you land?

A. Yee Chong.

Q. Were you examined by immigration inspectors when you landed? A. I don't like to talk.

Q. Did you show your native paper to anyone when you landed?

A. No. No inspectors bother me while I travel around. You are the only one who come to bother me.

Q. Did any inspector ever see your native paper?

A. (Indignantly.) I don't want you to ask me such a question. I don't remember at all.

Q. When were you married to Wong Shee in China? A. I don't want to tell you.

Q. How old were you when you married her?

A. (No answer.)

Q. Where is Wong Shee, your wife, now?

A. In China. [253]

Q. Was she ever in the United States?

A. You don't need to ask me any more questions. I will not answer you.

Q. Have you any papers to produce showing your right to be and remain in the United States?

A. No.

(Tracing of signature.)

(Chinese Characters.)

July 15, 1914, 9:30 A. M.

Q. Do you desire to answer my questions this morning?

A. I told you all about myself yesterday.

Q. Well, tell me again. When did you first go to China? A. I have no more to say.

Q. When did you return from China?

A. I don't remember.

Q. How many years ago?

A. I don't remember.

Q. Where did you land upon your return?

A. San Francisco.

Q. What is your occupation? A. Laundryman.

Q. Where have you been working?

A. I don't feel like talking to you.

Q. You claim you were born in the United States, and it is my duty to investigate your status, but I cannot do this unless you answer my questions. If you were born here it cannot hurt your case to answer all questions freely. **[254]**

A. I don't want you to talk to me; don't bother me any more, and refund me my money. I want to go to San Francisco on the next train.

Q. You are informed that a complaint will be sworn to against you charging you with *be unlawfulling* in the United States. A. It is up to me.

Q. Do you still claim you were born in San Francisco? A. Yes, sir.

Q. And you have no papers showing that fact?

A. I had a paper, but have no paper to present to you now, but I have a paper kept by my clansman.

Q. Now, if you were born in the United States why don't you answer my questions. If you were on the square you would not hesitate.

A. Because I don't want you to speak to me. I refuse to say anything more.

Q. Have you understood the interpreter during this examination? A. Yes.

(Tracing of signature.)

(Chinese Characters.)

[Endorsed]: No. 911—Crim. United States vs. Yee Chung. U. S. Exhibit No. 2. Filed May 21, 1915. Wm. M. Van Dyke, Clerk. T. F. Green, Deputy. **[255]**



YEE CHUNG, the Affiant, whose photograph is hereto attached, makes affidavit as follows, viz.: He is by birth a citizen of the United States, having been born in the City of San Francisco, California, at 728 Sacramento Street, on K. S. 6, 1st month and 8th day. His father was YEE GIM SING and his mother WONG SEE, they being natives of China and residing in San Francisco.

YEE CHUNG is a resident of Carnegie, Alle-

gheny County and State of Pennsylvania, his place of residence being at No. 111 Main Avenue, Carnegie.

Accompanying this Affidavit YEE CHUNG submits the copy of certain legal proceedings, the original of which is in his possession, taken in the City of Burlington, Vermont, on the 31st day of December, 1897, before George E. Johnson, a United States Commissioner for the District of Vermont, who, after a full hearing, in which it was charged against Yee Chung that being a Chinese person he was unlawfully within the territory of the United States, decided that Yee Chung, having established the fact that he was a native-born citizen of the United States, was therefore legally entitled to all the privileges of American citizenship, whereupon his discharge was at once ordered, and he was so discharged, and furnished with a copy of the records in the case.

Signed: YEE CHUNG.

Personally appeared before me a Notary Public in and for the County of Allegheny and State of Pennsylvania, the above-described YEE CHUNG, a resident of Carnegie, Pa., who being duly sworn according to law deposes and says that the above statement of facts is true in every particular.

JOHN A. SOSSONG,
Notary Public.

My Commission expires Jan. 19, 1907. **[256]**

We the undersigned citizens of Allegheny County, Pa., other than Chinese, are acquainted with the above-described Affiant, YEE CHUNG, and believe

his statement as herein set forth to be true.

E. R. DONEHOO,
Presbyterian Minister.
HERBERT F. JOHNS,
Banker.
Seattle, Wash.

Identified on departure, this Feb. 17, 1907.

J. V. STEWART,
Chinese Inspector. **[257]**

State of Pennsylvania,
City of Pittsburg,
County of Allegheny,—ss.
In Re o*d* YEE CHUNG.

LIM AH HEAUM, a resident of Allegheny County and State of Pennsylvania, his place of business being at 207 Grant Street, Pittsburg, Pa., being duly sworn, upon oath deposes and says: That the photograph on the preceding page of this paper is the photograph of YEE CHUNG, who is a native-born citizen of the United States. That YEE CHUNG is a son of YEE GIM SING & WONG SEE, who at the time of the birth of the said YEE CHUNG, K. S. 6, 1st month and 8th day, were residing in the City of San Francisco, Cal*a*fornia, at 728 Sacramento Street. That he, the said YEE CHUNG, has made his home continuously within the United States, with the exception of a brief visit to China. That he now contemplates a second visit to China, intending to return to the United States, the place of his nativity.

Signed: LIM AH HEAUM.

Sworn and subscribed to before me this 19th day of January, A. D. 1907.

[Seal] JOHN A. SOSSONG,
Notary Public.

My commission expires Jan. 19, 1907. [258]

United States of America,
District of Vermont.

BE IT REMEMBERED: That at Burlington in said District, on the 31st day of December, A. D. 1897, YEE CHUNG, a Chinese person, that is to say, a person of Chinese descent, late of Canton, China, was brought before Geo. E. Johnson, a United States Commissioner within and for the District of Vermont, on the complaint in writing, on his oath of office, of John H. Senter, United States Attorney, in and for the said District, duly filed with me as such Commissioner.

AND THEREUPON, upon said complaint, so filed with me, and because of the same, I, as such United States Commissioner, issued a warrant for the apprehension of the said YEE CHUNG, commanding him to be brought before me, as such Commissioner, forthwith for examination, as is provided in such cases by the Statutes of the United States; which said complaint and warrant of arrest, and the officer's return thereon are in the words and figures following:

United States of America,
District of Vermont,—ss.

To Geo. E. Johnson, Esq., United States Commissioner, within and for the District of Vermont, comes John H. Senter, United States Attorney in and for

the District of Vermont, and on his oath of office complaint makes that YEE CHUNG late of Canton, China, heretofore, to wit: On the 28th day of December in the year of our Lord one thousand eight hundred and ninety-seven, at Richford, in the County of Franklin, in the State and District of Vermont aforesaid, and within the jurisdiction of this Court, was then and there a Chinese person, that is to say, a person of Chinese descent, unlawfully and [259] without right within the United States, that is to say, at Richford aforesaid, contrary to the form, force and effect of the Statute of the United States in such case made and provided and against the peace and dignity of the United States.

JOHN H. SENTER,

United States Attorney for the District of Vermont.

The foregoing complaint was exhibited to me this 31st day of December, A. D. 1897, and process then issued.

GEO. E. JOHNSON,

United States Commissioner for the District of Vermont.

United States of America,
District of Vermont,—ss.

The President of the United States to the United States Marshal, within and for the District of Vermont, or Either of His Deputies, Greeting:

BY THE AUTHORITY OF THE UNITED STATES OF AMERICA, you are hereby commanded to arrest the body of the said YEE CHUNG, if to be found within your *precint,* and have him forthwith before the subscribing authority at the

office of Geo. E. Johnson, in Burlington, in the District of Vermont, aforesaid, that he may answer the foregoing complaint and be further dealt with according to law.

GIVEN under my hand at Burlington, in the County of Chittenden, in the State and District of Vermont, this 31st day of December, A. D. 1897.

(L. S.) GEO. E. JOHNSON,
United States Commissioner for the District of Vermont. [260]

United States of America,
District of Vermont,—ss.

At Richford, in said District, on this 1st day of January, A. D. 1898, by virtue of the within warrant, I arrested the body of the within named YEE CHUNG and read the same in his hearing, and now have him here in court as within commanded.

Attest: EMERY S. HARRIS,
U. S. Marshal for the District of Vermont.
By James A. Kelley,
Deputy.

FEES:

Serving warrant	2.00
Transport prisoner	
62 miles	6.20
Discharge defend	.50
1 day's attendance	2.00
	10.70

And afterwards, and on the 3d day of January, A. D. 1898, the warrant of arrest was returned served and respondent in Court.

And afterwards, and on the same 3d day of January said cause was continued until future date to be thereafter fixed.

And afterwards, and on the 8th day of January, A. D. 1898, said cause was further continued until the 19th day of January, A. D. 1898.

And afterwards, and on the 19th day of January, A. D. 1898, said cause came on for final hearing, the District Attorney appearing for the Government and D. J. Foster as counsel for respondent and after full hearing the respondent was DISCHARGED [261] from custody.

A true record.

(L. S.) Attest: GEO. E. JOHNSON,
United States Commissioner, for the District of Vermont.

United States of America,
District of Vermont,—ss.

I, Geo. E. Johnson, United States Commissioner, within and for the District of Vermont, do hereby certify that the above and foregoing is a true copy of the original complaint, warrant of arrest, judgment, order and decree, in the case of the United States vs. Yee Chung, for violation of the Chinese Exclusion Acts, (so called) as the same remain of record and on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office, at the City of Burlington, in said District of Vermont, this 31st day of October, A. D. 1906, and of the Independence

of the United States the one hundred and thirty-first.

[Seal] GEO. E. JOHNSON,

United States Commissioner for the District of Vermont. [262]

[Endorsed]: United States of America, District of Vermont. United States vs. Yee Chung. Transcript of record. Offered as Defts. Exhibit "A." U. S. Dist. Court, So. Dist. Cal., So. Div. 911–Crim. U. S. vs. Yee Chung. Defts, Exh. "A." Filed Apr. 2, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy. Rev. E. R. Donehoo, D. D. Library Flats, 109 Grandview Ave., Pittsburg, Pa. Bell phone, Hill 638–L. [263]

Defendant's Exhibit No. 3—Certified Copy of Record of Immigration Commissioner in Re Yee Chung.

Form 551. Inclosure 24890. From Department of Commerce and Labor Immigration Service, Port of Seattle, Wash. 11–1495.

Department of Commerce and Labor.
Immigration Service.
Office of the Commissioner.
Seattle, Wash.

United States of America,
State of Washington,
County of King,—ss.

I, HENRY M. WHITE, do hereby certify and declare that I am the United States Commissioner of Immigration in and for the State of Washington, and that as such officer I am the

lawful custodian of all papers, correspondence and records relating to the departure from and return to the United States of Chinese persons traveling via any port in said district; that the annexed paper (Dep. Serial No. 1795) in the case of YEE CHUNG, bearing an endorsement on the face thereof showing that said Chinaman departed from the United States on February 17, 1907, constitutes the complete record in said case taken from the files of my office and is the official record of the facts therein recited. I certify further that there is nothing in the files of my office evidencing the return of Yee Chung to the United States since his departure in 1907, as stated.

WITNESS my hand and official seal, this 19th day of August, 1914.

[Seal]

HENRY M. WHITE,
Commissioner. [264]



YEE CHUNG, the Affiant, whose photograph is hereto attached, makes Affidavit as follows, viz:

He is by birth a citizen of the United States, having been born in the City of San Francisco, California, at 728 Sacramento Street *on* California, K. S. 6, 1st month and 8th day. His father was YEE GIM SING and his mother, WONG SEE, they being natives of China and residing in San Francisco.

YEE CHUNG is a resident of Carnegie, Al-

legheny County and State of Pennsylvania, his place of residence being at No. 111 Main Avenue, Carnegie.

Accompanying this affidavit YEE CHUNG submits a copy of certain legal proceedings, the original of which is in his possession, taken in the City of Burlington and State of Vermont, on the 31st day of December, 1897, before George E. Johnson, a United States Commissioner for the District of Vermont, who, after a full hearing, in which it was charged against YEE CHUNG that being a Chinese person he was unlawfully within the territory of the United States, decided that Yee Chung having established the fact that he was a native-born citizen of the United States, was therefore legally entitled to all the privileges of an American citizen, whereupon his discharge was at once ordered, and he was so discharged, and furnished with a copy of the records in his case.

Signed: YEE CHUNG. [265]

Personally appeared before me a Notary Public in and for the County of Allegheny and State of Pennsylvania, the above described Yee Chung, a resident of Carnegie, Pa., who being duly sworn according to law, deposes and says that the above statement of facts is true in every particular.

[Seal] JOHN A. SOSSONG,
Notary Public.

My Commission expires Jan. 19, 1907.

We the undersigned citizens of Allegheny County, Pa., other than Chinese, are acquainted with the

above-described Affiant, YEE CHUNG, and believe his statement as herein set forth to be true.

E. R. DONEHOO,
Presbyterian Minister.
HERBERT F. JOHNS,
Banker.
Seattle, Wash.

Identified on departure this Feb. 17, 1907.

J. V. STEWART,
U. S. Chinese Inspector. [266]

State of Pennsylvania,
County of Allegheny,
City of Pittsburg,—ss.

In Re of YEE CHUNG.

LIM AH HEAUM, a resident of Allegheny County and State of Pennsylvania, his place of business being at 207 Grant Street Pittsburg, Pa., being duly sworn, upon oath deposes and says: That the photograph on the preceding page of this paper is the photograph of YEE CHUNG, a native-born citizen of the United States. That YEE CHUNG is a son of YEE GIM SING & WONG SEE, who at the time of the birth of YEE CHUNG, K. S. 6, 1st month, 8th day, were residing in the City of San Francisco, California, at 728 Sacramento Street. That he, the said YEE CHUNG, has made his home continuously within the United States, with the exception of a brief visit to China. That he now contemplates a second visit to China, intending to return to the United States, the place of his nativity.

Signed: LIM AH HEAUM,

Sworn and subscribed to before me this 19th day of January, A. D. 1907.

[Seal] JOHN A. SOSSONG,
Notary Public.

My Commission expires Jan. 19, 1907. [267]

United States of America,
District of Vermont.

BE IT REMEMBERED: That at Burlington in said District, on the 31st day of December, A. D. 1897, YEE CHUNG, a Chinese person, that is to say a person of Chinese descent, late of Canton, China, was brought before Geo. E. Johnson, a United States Commissioner within and for the District of Vermont, on the complaint in writing, on his oath in office , of John H. Senter, United States Attorney, in and for said District, duly fi*el*d with me as such Commissioner.

AND THEREUPON, upon said complaint, so filed with me, and because of the same, I, as such United States Commissioner, issued a warrant for the apprehension of the said Yee CHUNG, commanding him to be brought before me, as such Commissioner, forthwith for examination, as is provided in such cases by the statutes of the United States, which said complaint and warrant of arrest, and the officers return thereon are in the words and figures following:

United States of America,
District of Vermont,—ss.

To Geo. E. Johnson, Esq., United States Commissioner, within and for the District of Vermont, comes John H. Senter, United States Attorney in and for

the District of Vermont, and on his oath of office complaint makes that YEE CHUNG late of Canton, China, heretofore, to wit: on the 28th day of December in the year of our Lord one thousand eight hundred and ninety-seven, at Richford, in the County of Franklin, in the State and District of Vermont aforesaid, and within the jurisdiction of this Court, was then and there a Chinese person, that is to say a person of Chinese descent, unlawfully and without right within [268] the United States, that is to say at Richford aforesaid, contrary to the form, force and effect of the Statute of the United States in such case made and provided and against the peace and dignity of the United States.

JOHN H. SENTER,

United States Attorney for the District of Vermont.

The foregoing complaint was exhibited to me this 31st day of December, A. D. 1897, and process then issued.

GEO. E. JOHNSON,

United States Commissioner for the District of Vermont.

United States of America,

District of Vermont,—ss.

The President of the United States to the United States Marshal, Within and for the District of Vermont, or Either of His Deputies, Greeting:

BY THE AUTHORITY OF THE UNITED STATES OF AMERICA, You are hereby commanded to arrest the body of the said YEE CHUNG, if to be found within your *precint,* and have him forthwith before the subscribing authority at the

office of Geo. E. Johnson, in Burlington, in the District of Vermont, aforesaid, that he may answer the foregoing complaint and be further dealt with according to law.

Made under my hand at Burlington in the County of Chittenden, in the State and District of Vermont, this 31st day of December, A. D. 1897.

(L. S.) GEO. E. JOHNSON,
United States Commissioner for the District of Vermont. [269]

United States of America,
District of Vermont,—ss.

At Richford, in said District, on this 1st day of January, A. D. 1898, by virtue of the within warrant, I arrested the body of the within-named YEE CHUNG and read the same in his hearing, and now have him in Court as within commanded.

Attest: EMERY S. HARRIS,
U. S. Marshal for the District of Vermont,
By James A. Kelley,
Deputy.

FEES:

Serving warrant	$2.00
Transport prisoner 62 miles	6.20
Discharge Defend.	.50
1 Days attendance	2.00
	$10.70

And afterwards, and on the 3d day of January, A. D. 1898, the warrant of arrest was returned served and respondent in Court.

And afterwards, and on the same 3d day of Janu-

ary, said cause was continued until future date to be thereafter fixed.

And afterwards, and on the 8th day of January, A. D. 1898, said cause was continued until the 19th day of January, A. D. 1898.

And afterwards, and on the 19th day of January, A. D. 1898, said cause came on for final hearing, the District Attorney [270] appearing for the Government and D. J. Foster as counsel for the respondent and after full hearing the respondent was DISCHARGED from custody.

A true record.

Attest: GEO. E. JOHNSON,
United States Commissioner, for the District of Vermont.

United States of America,
District of Vermont,—ss.

I, George E. Johnson, United States Commissioner, within and for the District of Vermont, do hereby certify that the above and foregoing is a true copy of the original complaint, warrant of arrest, judgment, order and decree, in the case of the United States vs. YEE CHUNG, for violation of the Chinese Exclusion Acts (so called), as the same remain of record and on file in my office.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my seal of office, at the City of Burlington, in said District of Vermont, this 31st day of October, A. D. 1906, and of the Independence

of the United States the one hundred and thirty-first.

(L. S.) GEO. E. JOHNSON,
United States Commissioner for the District of Vermont. **[271]**

[Endorsed]: Yee Chung of Carnegie, Pa. Rev. E. R. Donehoo, D. D., Library Flats, 109 Grandview Ave., Pittsburg, Pa. Bell Phone Hill 638–L. Return Serial No. ——. Dep. Serial No. 1795. Name, Yee Chung. Class, N. B. Residence, Carnegie, Pa. Papers Filed Feb. 17, 1907. Identified and Departed per S. S. "Dakota" Feby. 17, 1907.

911–Crim. U. S. Dist. Court, So. Dist. Cal., So. Div. U. S. vs. Yee Chung. Defts. Exh. "B." Filed Apr. 2, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy. Defts. Ex. "B." Filed Sept. 25, 1914. Chas. N. Williams, U. S. Commissioner. **[272]**

Defendant's Exhibit "C"—Certificate of Identity of Yee Wah, etc.

DESCRIPTION

ORIGINAL

No. 11741

UNITED STATES OF AMERICA

CERTIFICATE OF IDENTITY

ISSUED IN CONFORMITY WITH A REGULATION OF THE DEPARTMENT OF COMMERCE AND LABOR, ADOPTED MARCH 19, 1909.

Memo. for the Commissioner.

12720/8–17.

In Re YEE WAH, Alleged Son of a Native.

July 1st, 1913.

* * * The alleged father claims to have returned to the United States from China by Vancouver, B. C., ex SS. "Empress of China," K. S. 23–11 (November or December, 1897), and to have immediately proceeded to the United States via Montreal and Richford, Vermont. He presents court record of discharge No. 121, issued in his name, by the District Court of Vermont. The alleged father, it will be noted, was landed at this port No. 47 Manchuria, Nov. 12th, 1909, by virtue of his previous landing by Commissioner Johnson January 19th, 1897. Manifestly the examining inspector is not satisfied that the essential trip has been absolutely verified, but in my opinion the prior landing record No. 47 contains sufficient evidence to show that the alleged father in the present case is the identical person landed by the Court in 1897. Accordingly, the essential trip is verified and I recommend admission.

A. W. LONG,

Inspector, Law Division. **[273]**

Pittsburg, Pa.

* * * The alleged father, Yee Chung of his coming and now detained alleged son, Yee Wah, stated his testimony in a candid and frank way, corroborating all of his alleged son's statements in a most minute manner, so that I feel impressed that the truth was told.

The witness Yee Wing also made a statement which corresponds in its entirety to all testimony given by Yee Wah.

On account that all testimonies were given in such a frank way and corroboratively implying the truth, I think I feel justified to ask a favorable consideration concerning the admission of Yee Wah.

(Signed) B. B. MARHEINEKE,
Investigating Interpreter. **[274]**

Defendant's Exhibit "D"—Certificate of Identity of Yee Lai.

DESCRIPTION

Name Yee Lai

Age 16 Height 4 ft 11 in

Occupation Student Former Place of Residence Canton China

Last Place of Residence Portland Or

Intends to reside permanently in the United States

Date of departure from China Dec 1912

Name of vessel Empress of China

Date of arrival at port of entry Dec 30 1913

Immigration Officer in Charge

ORIGINAL

No. 13949

UNITED STATES DEPARTMENT OF COMMERCE AND LABOR

CERTIFICATE OF IDENTITY

ISSUED IN CONFORMITY WITH A REGULATION OF THE DEPARTMENT OF COMMERCE AND LABOR, ADOPTED MARCH 19, 1909.

This is to certify that the person named and described on the reverse side hereof has been regularly admitted to the United States as one of the persons entitled, under the laws of the United States, to be transported, and is granted such free transportation and protection as may be necessary to secure the admission of which official action is required to secure to the person to whom issued, and his personal effects, admission to the United States and the approval of the Bureau of Immigration officer signing this certificate, unless sooner surrendered to such officer.

PUTNAM & VALENTINE

[273]

Defendant's Exhibit "E"—Copy of Report of Chinese Inspector in Re Yee Chung.

December 13th, 1909.

Inspector-in-Charge, C. D., I. S.,

San Francisco, California.

In Re Yee Chung, Native, C. R., 47 Manchuria, 11/12/09, I have to report as follows:

This applicant presents a transcript of a record of Commissioner Johnson, District of Vermont, without a photograph attached, showing that a Chinaman of the same name was discharged by said Commissioner January 19th, 1897. The ground of the discharge is not shown, but in view of the fact that it appears that the respondent in that case entered the United States at Richford, Vermont, and was subsequently taken to Burlington, where he was discharged by Commissioner Johnson, I am satisfied that he was discharged on the ground of birth in the United States, because had he set up any other claim, such claim would have been investigated at the Port of Richford.

According to the report of the Inspector-in-Charge at Richford, dated November 26th, 1909, there is no testimony in Commissioner Johnson's records of the cases at the time of the discharge of said respondent and the Commissioner's records consist simply of the docket entries, complaint, warrant, etc.

By the telegram of the Inspector-in-Charge at Richford, dated December 19th, 1909, in reply to

telegram of this office of December 7th, 1909, it appears that the transcript of the record presented by this applicant is genuine.

Considering the lapse of time the applicant claims to have been arrested and discharged by Commissioner Johnson, I am reasonably satisfied from his examination that he is the respondent, Yee Chung, discharged by Commissioner Johnson, January 19th, 1897. Although he claims that he distinctly remembers **[276]** the Commissioner who discharged him and the description he has given of said Commissioner by no means shows him to have been Commissioner Johnson, I think it would be unreasonable to hold the applicant too strictly to this description in view of the 12 years that have elapsed since his alleged discharge.

In view of the foregoing, I recommend landing. All papers herewith.

Respectfully,
CHAS. D. MAYER,
Chinese Inspector.

LAJ.

To the Commissioner at San Francisco, from office of the Chinese Inspector at Richford, Vt. Nov. 26th, 1909.

(Letter states that Commissioner Johnson died in Burlington, Vt., in November, 1907), and that records and dockets are in custody of the Clerk of the U. S. Court at Rutland, Vt.)

* * * It is noted that this applicant alleges that he was discharged on Dec. 31st, 1897. During this time and until James L. Martin was appointed

U. S. Attorney in 1898, the dockets of Commissioner Johnson only show the dates of the hearings and that the respondent was discharged, there being no transcript of testimony taken at that time, nor record, simply the docket entries, complaint, warrant, etc. Photograph was not attached to any of the papers at that time and only in very rare instances was a photograph attached to Commissioner Johnson's docket at later dates. * * *

(Signed) ARTHUR L. WEEKS,
Chinese Inspector-in-Charge. **[277]**

[Endorsed]: 911–Crim. U. S. Dist. Court, So. Dist. Cal., So. Div. U. S. vs. Yee Chung. Defts. Exh. "E." Filed Apr. 2, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy. **[278]**

Defendant's Exhibit "F"—Correspondence Between U. S. Commissioner and Clerk U. S. District Court of Vermont in Re Records of U. S. Commissioner.

August 13, 1914.

Clerk U. S. District Court,
District of Vermont,
Rutland, Vermont.

SIR: You will please find inclosed herewith what purports to be a certified copy of a record of discharge issued by one George E. Johnston, United States Commissioner, residing at Burlington, Vermont, in the matter of a Chinese person named YEE CHUNG, said discharge being dated January 19, 1898, and the certified copy dated October 31, 1906. There is attached to said certified copy an

affidavit of Yee Chung, to which is attached a photograph, which is a fair likeness of said Yee Chung, who is now under arrest in this District under the name of Yee Chong, and the case is pending before me.

I will thank you to compare the signature and seal of said George E. Johnston, United States Commissioner, aforesaid, with that on file in your office, as I understand that Mr. Johnston is now dead and all his official records as Commissioner are on file in your office.

Also compare photograph attached to affidavit with the photograph attached to Commissioner Johnston's docket, if one is so attached to the docket.

Also ascertain, if possible, under what status said Yee Chung was discharged, whether as merchant, minor son of merchant or native.

Also what bond was furnished for the appearance of said Yee Chung, and who the sureties were. **[279]**

Also what witnesses testified on behalf of said Yee Chung.

Also, if possible, secure transcript of testimony which was offered in the case before Commissioner Johnston, and forward same to me for court purposes. Said transcript will be returned to you when it has served its purpose.

Also ascertain the number of copies of the record issued by Commissioner Johnston and to whom.

Any other matter which will throw light on this case will be appreciated.

The immigration authorities in this city have requested their office in Boston to make an investigation in this case, and it is suggested that you hold the papers transmitted herewith until their officers, who will call on you, can make an investigation, and have an opportunity to examine the papers sent you; after which please return to me, with report of your investigations.

Thanking you in advance, I remain,

Respectfully,

(Signed) CHAS. N. WILLIAMS,

United States Commissioner, Southern District of California. **[280]**

Office of the Clerk,
District Court of the United States,
District of Vermont.

Frederick S. Platt,
Clerk.

Rutland, August 18, 1914.

Charles N. Williams, Esq.,
U. S. Commissioner,
Los Angeles, California.

My dear Sir: I have your letter of August 13th, inclosing record with papers attached, in cause U. S. vs. Yee Chung.

The copy of record is undoubtedly genuine. The signature and seal attached thereto are the genuine signature and seal of former U. S. Commissioner, George E. Johnson, of the District of Vermont.

A photograph of the respondent is not attached either to the record or docket entries of former U. S. Commissioner Johnson. There is nothing in

either the record, the docket, or upon the papers filed in the case, to show the reason of the discharge of the respondent. There is nothing to show that any bond was furnished for the appearance of the respondent. There is nothing from which I can give you the names of the witnesses, either for the United States or for the respondent.

I do not know of any way to obtain a transcript of the evidence in any case tried before Commissioner Johnson prior to May, 1898.

There is nothing to show how many copies of the [281]

C. N. W. 2 8/18/14

record were issued by Commissioner Johnson, nor to whom such copies were issued.

I do not like to keep such papers as you inclosed to me for the reason that they do not belong in this office, but inasmuch as you state that the immigration authorities from Boston are likely to come here and investigate the matter, I will keep them for a reasonable time.

I do not understand how my statements made in this way can be coonsidered by a court, but inasmuch as you have called for them, I am writing this letter.

I trust that I may soon be directed how to dispose of the papers which you sent me.

Very truly yours.

F. S. PLATT,
Clerk. [282]

Office of the Clerk,
District Court of the United States,
District of Vermont.

Frederick S. Platt,
Clerk.

Rutland, August 21, 1914.

Charles N. Williams, Esq.,
U. S. Commissioner,
Los Angeles, California.

My dear Sir: Mr. Sullivan, from the office of the Chinese Inspector, at Boston, has been to this office and examined into the Yee Chung case, mentioned in your letter to me of August 13th.

I am herewith returning to you the certified copy of the record in the case with the affidavits, photograph, etc., which were attached and which were forwarded to me in your letter of August 13th. Will you kindly acknowledge receipt of the same.

Since I wrote you on August 18th, I have made further examination of the copy of record, which you sent me and of the original record of the case, now in this office.

Beyond any possible question, the original record is a carbon copy of the paper certified to Mr. Johnson as a copy of the record. I have learned that when Mr. Johnson made a record, it was his custom to make it in duplicate. One of the papers he certified as the record and the other, the copy, and forwarded to any party who desired a certified copy of the record. [283]

C. N. W. 2 8/21/14.

It is evident, therefore, that the copy of the record, which you sent me and which I am herewith returning, is the one that was made at the same time the original record was made.

I am sure of this because each line and page of the inclosed copy of the record exactly corresponds with the original record and where there are any defects in the workmanship, the same defects appear both in the original record and in the inclosed copy.

If you will look at the second page of the record at the line under the signature of Mr. Johnson, "For the District of Vermont" and the broken line below, the original record is an exact counterpart of the inclosed. I am, therefore, convinced that the inclosed copy of record is genuine and is the one that was made by former Commissioner Johnson when the original record was made.

Very truly yours,

F. S. PLATT,

Clerk.

[Endorsed]: 911—Crim. U. S. Dist. Court, So. Dist. Cal. So. Div. U. S. vs. Yee Chung. Defts. Ex. "F." Filed Apr. 2, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy. [284]

ORIGINAL.

In the United States District Court, in and for the Southern District of California, Southern Division.

No. 911.

THE UNITED STATES OF AMERICA,

vs.

YEE CHUNG,

Defendant,

Notice of Appeal.

To the Clerk of the Above-entitled Court and to the Hon. ALBERT SCHOONOVER, United States Attorney for the Southern District of California.

You and each of you will please take notice that Yee Chung, defendant herein, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment and order made and entered herein on the 19th day of January, 1916, affirming the judgment of the Commissioner, and ordering the defendant herein deported.

Dated, at Los Angeles, Cal., this 22 day of March, 1916.

ISIDORE B. DOCKWEILER,
JOHN L. McNAB,
Attorneys for Defendant and Appellant. [285]

[Endorsed]: Original. No. 911–Criminal. In the United States District Court, in and for the Southern District of California, Southern Division. The United States of America, vs. Yee Chung, Defendant. Notice of Appeal. Service of the Within

Notice of Appeal is hereby admitted this 22 day of March, 1916. Albert Schoonover, U. S. Attorney for Plaintiff. MEG. Isidore B. Dockweiler and John L. McNab, Suite 502, Douglas Bldg. Office, Tel. Main 1320 (Sunset), Home 1320, Los Angeles, Cal., Attorneys for Defendant. Removed to 1035 I. N. Van Nuys Building. Filed Mar. 22, 1916, at ——min. past 11 o'clock A. M. Wm. M. Van Dyke, Clerk. Murray C. White, Deputy. **[286]**

ORIGINAL.

In the United States District Court, in and for the Southern District of California, Southern Division.

No. 911.

THE UNITED STATES OF AMERICA,

vs.

YEE CHUNG,

Defendant.

Petition for Appeal.

Now comes Yee Chung, defendant, and the appellant herein, and says:

That on the 19th day of January, 1916, the above-entitled court made and entered its judgment, affirming the judgment of the Commissioner and ordering the defendant deported, in which said judgment and order in the above-entitled cause certain errors were made to the prejudice of the appellant herein, all of which will more fully appear from the assignment of errors filed herewith.

WHEREFORE, this appellant prays that an ap-

peal may be granted in his behalf to the United States Circuit Court of Appeals for the Ninth Circuit thereof, for the correction of the errors so complained of, and to reverse, annul and set aside the said order and judgment made and entered in the premises on the 19th day of January, 1916; and further, that a transcript of the record, proceedings and papers in the above-entitled cause, as shown by the praecipe, duly authenticated, [287] may be sent and transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit thereof.

Dated at Los Angeles, California, this 20th day of March, 1916.

ISIDORE B. DOCKWEILER,
JOHN L. McNAB,
Attorneys for Defendant and Appellant herein.

[Endorsed]: Original. No. 911—Criminal. In the United States District Court, in and for the Southern District of California, Southern Division. The United States of America vs. Yee Chung, Defendant. Petition for Appeal. Service of the within Petition is hereby admitted this 20th day of March, 1916. Clyde R. Moody, Asst. U. S. Attorney. Isidore B. Dockweiler and John L. McNab, Suite 502, Douglas Bldg. Office, Tel. Main 1320 (Sunset), Home 1320, Los Angeles, Cal., Attorneys for Defendant. Removed to 1035 I. N. Van Nuys Bldg. Filed Mar. 20, 1916, at 55 min. past 1 o'clock P. M. Wm. M. Van Dyke, Clerk. T. F. Green, Deputy. [288]

ORIGINAL.

In the United States District Court, in and for the Southern District of California, Southern Division.

No. 911.

UNITED STATES OF AMERICA,

vs.

YEE CHUNG,

Defendant.

Assignment of Errors.

(On Appeal from District Court.)

Comes now, Yee Chung, the appellant herein, by his attorneys John L. McNab, Esq., and Isidore B. Dockweiler, Esq., in connection with his petition for an appeal, assigns the following errors, which he avers occurred upon the trial or hearing of the above-entitled cause, and upon which he will rely, upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to wit:

1.

The District Court erred in holding and deciding that where a person claims to be a native-born citizen of the United States, notwithstanding he is of Chinese descent, that the burden of proof is upon him to establish the fact that he is such citizen, and lawfully entitled to remain within the United States.

2.

The District Court erred in not holding and deciding that where a person claims to be a native-born citizen of the United [289] States, notwithstanding he is of Chinese descent, that the burden of

proof was upon the Government to affirmatively establish that such person is not a person born within the United States and is not entitled to remain within the United States.

3.

The District Court erred in holding and deciding that the proceedings, record and judgment of the United States Commissioner for the District of Vermont, before whom defendant had a hearing in January, 1898, and was discharged by said Commissioner as a citizen of the United States, was not *res adjudicata,* and that the District Court was not bound thereby.

4.

The District Court erred in holding and deciding and making a finding of fact that Yee Chung, the defendant, was not the same and identical person referred to in the report of the United States Commissioner for the District of Vermont, wherein it was declared that Yee Chung was a citizen of the United States, and lawfully entitled to remain within the United States, and accordingly discharged.

5.

The District Court erred in not holding and deciding and making a finding of fact that Yee Chung, the defendant, was the same and identical person referred to in the report of the United States Commissioner for the District of Vermont, wherein it was declared that Yee Chung was a citizen of the United States, and lawfully entitled to remain within the United States, and accordingly discharged.

6.

The District Court erred in weighing and considering evidence upon the question of fact already determined by the [290] report of Inspector Mayer, of the Immigration Department (Defendant's Exhibit "E"), wherein, after investigation, it was declared that defendant, Yee Chung, was the same and identical person discharged as a citizen of the United States by the United States Commissioner for the District of Vermont in 1898; and which report of said Inspector recommended landing of defendant in 1909.

7.

The District Court erred in weighing and considering evidence, and making a finding of fact upon the question of the identity of Yee Chung, that defendant was not the same and identical person who was born in San Franscisco, California, February 17, 1880, and therefore, a native-born citizen of the United States.

8.

The District Court erred in weighing and considering evidence, and making a finding of fact that defendant, Yee Chung, was not the same and identical person who was lawfully landed at Vancouver, British Columbia, in 1897; and later, after hearing, discharged by the United States Commissioner for the District of Vermont as a lawful citizen of the United States.

9.

The District Court erred in the rejection of testimony of the witness Yee Ying Dock with respect

to receiving letters written by defendant's father, relative to the birth of defendant, Yee Chung, in San Francisco, California, offered by defendant upon the trial of the cause in the following instance:

"Q. (By Mr. McNAB.) After you arrived in China did you receive a letter that was written by Yee Kim Sing to your [291] father in regard to his family affairs in San Francisco?"

"Mr. SCHOONOVER.—Objected to as incompetent, irrelevant and immaterial. It does not appear that it would tend to establish or disprove any issue in the case.

"Mr. DOCKWEILER.—It is preliminary.

"The COURT.—Yes, it is hearsay. The objection is sustained. It is incompetent.

"Mr. McNAB.—And without intending in the slightest degree to interfere with your Honor's ruling, but in order to get the entire question in the record, I will amplify the question in this respect:

"Q. After you had gone to China did you see letters written by Yee Kim Sing to your father announcing the birth of a boy and the name that they had given him?

"Mr. SCHOONOVER.—Objected to as incompetent, irrelevant and immaterial, and calling for hearsay testimony.

"The COURT.—The objection is sustained.

"Mr. McNAB.—And we except.

"Q. Now, did you, while in China, and shortly after you arrived there, see any correspondence

between Yee Kim Sing and your father at all?

"Mr. SCHOONOVER.—Objected to on the same grounds as the *the* objection made to the former question.

"The COURT.—The objection is sustained."

(Stipulation in record that exceptions may be deemed excepted to.)

10.

The District Court erred in admitting in evidence, over the objection of defendant, and in not sustaining defendant's [292] objection to the offer in evidence, by the Government, of the record of the Vancouver Office of the United States Immigration Service in the following instance:

"Mr. MOODY.—This record which I offer here is supposed to be and is certified to be a record of the Vancouver office of the United States Immigration Service, and the point upon which it was refused before is that it is *ex parte,* and an affidavit and a statement of a man who says his name is Yee Kim Sing, and in his affidavit says he was a merchant at 40 Harrison Street, Boston, and it gives the physical description of the man. * * * The materiality of it lies in this,—that this man claims his father was a man named Yee Kim Sing, who was a merchant at No. 40 Harrison Street, Boston; and he further says that his picture looks like his father; and the materiality of it lies in showing the actions of this man Yee Kim Sing relative to the actions that Yee Chung ascribed to Yee Kim Sing in his statements as

to what his father did at the times he said his father did those things. * * *

"Mr. McNAB.—He testifies that it is not his father.

"Mr. MOODY.—No; he said at first it was not his father, and then upon reconsidering it he said it looked like his father."

"Mr. McNAB.—Well, we will just see what the record says.

"Mr. MOODY.—Page 78.

"Mr. McNAB.—We object to the admissibility of this, if your Honor please, on the ground that it is incompetent, irrelevant and immaterial, and that it does not intend to impeach the witness; that it is *res inter alios acta;* that it is merely a record of proceedings taken with regard to a person not confronted upon his trial, which are binding upon [293] this defendant, a record of an action taken by a person not related to the trial, without any privilege on the part of this defendant of cross-examining him or showing anything in relation to it whatever. He was shown a photograph at the trial, and said, 'Is this a photograph of your father as he appeared when you went down to Boston with him from Burlington, Vermont (exhibiting picture). Yes, that looks like my father.' * * * He does not say now that it is a picture of his father; he says it looks like his father. His first statement was that it was not. * * * 'Q. You say this is a different

picture then, than was shown to you in the hearing before Mr. Williams, the Commissioner? A. It don't appear to me to be the same (reading).'

"If it were attempted to prove by a record here, if your Honor please,, that a person by the name of Yee Kim Shing or Yee Kim Sing had admitted at any place that he departed from this country at a particular time, the mere attaching of a certificate to it would not make it admissible in evidence. At most it is a declaration or statement made by a person who is not a party to this record, and the mere addition of a certificate stating that it is found among the official records of a certain department does not make it evidence in a court of justice. That sort of thing is very frequently used before a United States Commissioner and on hearings before inspectors, but we are dealing with a question of evidence. It is an action between parties not parties to this record, which is not binding upon this defendant, and regarding matters over which we have no control by cross-examination.

"The COURT.—You do not ask to have it admitted for the purposeof showing any fact that took place at that time or **[294]** any fact that it is proper for the Government to record; you are seeking to have it introduced for the purpose of showing by the hearsay declaration of a third party that a certain individual did something at that time. Now, this

will be admissible as evidence that the man whose picture is shown here went out at that time and place. I do not see anything to show that that took place, as a matter of fact. He went out, it is merely found, in Vancouver.

* * *

"Mr. MOODY.—We will offer it, then, for the purpose of showing that a man of the facial characteristics of the one whose picture is shown on there left there at that time.

"The COURT.—It will be admitted for that purpose. That the individual whose picture is shown on that document departed at that time, and for that purpose only.

"Mr. McNAB.—In view of the fact that that also was made before we had a chance to object, I would like to place before your Honor's ruling the objection. May we do that?

"The COURT.—Yes.

"Mr. McNAB.—We object to it on the ground that such proof would be incompetent, irrelevant and immaterial and not in any way binding upon this defendant, and not tending to prove any issue involved in this hearing.

"The COURT.—The objection is overruled.

"Mr. McNAB.—Exception. That is just the photograph, as I understand it.

"The COURT.—Oh, no; the whole thing. But it is admitted only for the purpose of showing that the individual whose photograph is pasted on one of these sheets of paper departed

as stated in the record. It is competent for that purpose, in my judgment." [295]

11.

The District Court erred in admitting in evidence, over the objection of defendant and in not sustaining defendant's objection to the offer to show by the witness Jolliffe the contents of certain Canadian Government manifests, made long prior to the time of his employment, in the following instance:

"Q. What is your occupation?

"A. Dominion Immigration Agent and controller of Chinese Immigration.

"Q. Of British Columbia?

"A. For Vancouver, British Columbia.

"Q. How long have you occupied that position? A. For five months.

"Q. In your present position I will ask you if you are custodian of the manifests showing the landing of passengers at the port of Vancouver, British Columbia, during the years 1907 and 1908 or portions of those years?

"A. I am.

"Q. Have you such manifest with you?

"A. Did you say 1907?

"Q. 1897, I mean, and 1898.

"A. Yes. And I have those papers with me. * * *

"Q. What Chinese persons were landed from that boat October 20, 1897, as shown by the manifest?

"A. Well, there were a number of them. * * *

"Q. What is the description as shown by the manifest of the two Yee Chungs.

"Mr. DOCKWEILER.—I don't know, your Honor. If there is any record that they desire to introduce, after identification of the record, the records could be introduced. The record speaks for itself. I don't know that it is proper for the witness to testify to what the record contains. **[296]**

"The COURT.—Well, it is a record of another government over which we have no control and no right to assume or attempt to control.

* * *

"Q. (By Mr. McNAB.) Then as I understand it, the extent of your testimony is that these are records which are found in your office, and you do not know anything about how they were prepared except your knowledge of how you now prepare these?

"A. I only know that those are the official Canadian records of the arrival of Chinese between those dates."

12.

The District Court erred in weighing and considering the evidence of witness Jolliffe in finding that defendant, Yee Chung, was not the same and identical person who was lawfully landed at Vancouver, British Columbia, in 1897; and in not holding that defendant was lawfully landed at Vancouver, British Columbia, in 1897.

13.

The District Court erred in excluding offer of

testimony on behalf of defendant to prove discrepancies and the incorrectness of the Canadian Government manifests, relating to Chinese, by witness Edsell, in the following instance:

"Q. (By Mr. McNAB.) At any of those stations, Mr. Edsell, did you have occasion to interest yourself and familiarize yourself with the manifests kept and maintained by the Canadian Government on incoming Chinese at the port of Vancouver? A. Yes. * * *

"Q. Did you find any mistakes in the records?

"Mr. SCHOONOVTR.—I object to that as immaterial. [297]

"The COURT.—Yes. This is going back the other way. The objection is sustained.

(Stipulation in record that objections are deemed excepted to.)

"Mr. McNAB.—Q. Did you ever have any occasion to inspect the manifests of incoming Chinese? A. Yes.

"Q. Over how long a period of time?

"A. For no particular length of time, but for specific instances of arrivals.

"Q. Find any mistakes in them?

"Mr. SCHOONOVER.—I object to that as immaterial, irrelevant and incompetent, and calling for a conclusion of the witness.

"The COURT.—Yes; that would open up a wide range of inquiry to find out whether these mistakes were mistakes in fact, if you wanted to pursue it down to any degree of definiteness. * * *

"Mr. McNAB.—Let me ask this question: I presume in your experience there you had cases where a Chinese would claim to have come in on a certain steamer, and his name was not on the manifest; is not that correct?

"A. I believe I have known of such instances.

"Q. Did the Immigration Service consider that as conclusive evidence against them?

"Mr. SCHOONOVER.—I object to that as it would have no bearing on this case, and would not in any way bind this court.

"Mr. McNAB.—That may be quite true. I think it is a close point. My purpose, to be perfectly frank, is to show, if it is permissible under the rules of evidence, that if a name was given by a Chinese as coming in on an incoming **[298]** steamer, and on a search of the manifest that name was not found there, it was not taken as conclusive evidence that he did not come in on that steamer; in other words, that while in fact if his name was there, it might be taken as conclusive evidence, if all the identifying marks were there, yet the fact that his name was not there was not taken as conclusive evidence against him.

"The COURT.—I would rather suppose, in spite of whatever persuasiveness that fact might have on the Immigration Department that the court would not be justified in leaning upon the Immigration Department for support in determining what conclusion should be arrived at in this case. I realize that it is a very

important question in this case, but at the same time, as I indicated before, I know of no reason why this case should not be tried according to the rules of evidence that are applicable in court.

"Mr. McNAB.—That is the only way I knew how to get at that."

14.

The District Court erred in affirming the judgment of the Commissioner, and ordering the defendant deported.

15.

The District Court erred in weighing and considering the evidence and in holding that Yee Chung was not the son of Yee Kim Sing, born in San Francisco, California, about 1880, and not a citizen of the United States, and entitled to remain within the United States.

16.

That the judgment of the District Court is not warranted by, nor supported by the facts, or the law in the premises, [299] but is contrary thereto.

17.

That said judgment is against law in this: That it appears by a preponderance of the evidence that defendant, Yee Chung, is a native-born citizen of the United States, that he is the same and identical person who was discharged by the United States Commissioner for the District of Vermont as a citizen of the United States.

WHEREFORE, the appellant prays that the

judgment and order of the United States District Court in and for the Southern District of California, made and entered herein in the office of the Clerk of said court on the 19th day of January, A. D. 1916, affirming the judgment of the Commissioner, and ordering defendant deported, be reversed, and the cause remanded, with instructions to discharge defendant from custody.

Dated, Los Angeles, Cal., this 20th day of March, 1916.

ISIDORE B. DOCKWEILER and
JOHN L. McNAB,
Attorneys for Defendant and Appellant.

[Endorsed]: Original. No. 911–Criminal. In the United States District Court in and for the Southern District of California, Southern Division. The United States of America vs. Yee Chung, Defendant. Assignment of Errors. (On Appeal from District Court.) Service of the within Assg. of Errors is hereby admitted this 20th day of March, 1916. Clyde R. Moody, Asst. U. S. Atty. Isidore B. Dockweiler & John L. McNab, Suite 502, Douglas Bldg. Office Tel., Main 1320 (Sunset), Home 1320, Los Angeles, Cal., Attorneys for Defendant. Removed to 1035 I. N. Van Nuys Bldg. Filed Mar. 20, 1916, at 55 min. past 1 o'clock P. M. Wm. M. Van Dyke, Clerk. T. F. Green, Deputy. **[300]**

ORIGINAL.

In the United States District Court, in and for the Southern District of California, Southern Division.

No. 911.

THE UNITED STATES OF AMERICA,

vs.

YEE CHUNG,

Defendant.

Order Allowing Petition for Appeal.

On this 20th day of March, A. D. 1916, came Yee Chung, defendant herein by his attorneys, John L. McNab, Esq., and and Isidore B. Dockweiler, Esq., and having previously filed herein, did present to this Court, his petition praying for the allowance of an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, intended to be urged and prosecuted by him, and praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent and transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had in the premises as may seem proper.

ON CONSIDERATION WHEREOF, the Court hereby allows the appeal hereby prayed for, and orders that the said defendant Yee Chung be admitted to bail pending said appeal in the sum of $2,500.00, conditioned as the law directs;

AND IT IS HEREBY FURTHER ORDERED that upon said defendant giving such bond in the aforesaid amount, execution and remand and all proceedings upon the said judgment appealed from herein be and the same are hereby stayed during the pendency of the **[301]** appeal taken herein from said judgment, provided said appeal be docketed in the Circuit Court of Appeals in the May term, and that said defendant to not depart from the jurisdiction of this Court, but remain and abide by whatever judgment shall finally be entered herein;

AND IT IS HEREBY FURTHER ORDERED that the bond for costs be and the same is hereby fixed in the sum of $250.00.

Dated at Los Angeles, California, this 20th day of March, 1916.

BLEDSOE,
United States District Judge.

[Endorsed]: Original. No. 911—Criminal. In the United States District Court, in and for the Southern District of California, Southern Division. The United States of America vs. Yee Chung, Defendant. Order Allowing Petition for Appeal. Isidore B. Dockweiler & John L. McNab, Suite 502, Douglas Bldg. Office Tel., Main 1320 (Sunset), Home 1320, Los Angeles, Cal., Attorneys for Defendant. Removed to 1035 I. N. Van Nuys Bldg. Filed Mar. 20, 1916, at 30 min. past 2 o'clock P. M. Wm. M. Van Dyke, Clerk. Murray C. White, Deputy. **[302]**

Bond for Appearance.

ORIGINAL.

KNOW ALL MEN BY THESE PRESENTS: That we, Yee Chung, as principal, and the Illinois Surety Company, a corporation, as surety, are held and firmly bound unto the United States of America in the full and just sum of Twenty-five Hundred ($2500.00) Dollars, to be paid to the United States of America, to which payment well and truly to be made we bind our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 21st day of March, in the year of our Lord one thousand nine hundred and sixteen.

WHEREAS, lately at a District Court of the United States for the Southern District of California, Southern Division, in a matter depending in said court between the United States of America and Yee Chung, a judgment was rendered against the said Yee Chung, ordering him deported, and the said Yee Chung having obtained from said Court an order allowing an appeal to reverse the judgment in the aforesaid matter and a citation directed to the United States Attorney for the Southern District of California, citing and admonishing him to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, in the State of California.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that if the said Yee Chung shall appear, either in person or by attorney, in the said United States Circuit Court of Appeals for the

Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said court and prosecute his said appeal and shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in execution of the judgment appealed from as said court may direct, if the judgment [303] ordering him deported shall be affirmed; or the said appeal be dismissed; and if he shall appear for trial in the said District Court of the United States for the Southern District of California, Southern Division, on such day or days as may be appointed for the retrial by said District Court, and abide by and obey all orders made by said court, provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void; otherwise, to remain in full force, virtue and effect.

YEE CHUNG, [L. S.]
Principal.

ILLINOIS SURETY COMPANY, a Corporation,
By F. IRWIN HERRON, [Seal]
Its Atty. in Fact.

And ————————,
Surety.

(Photo of Chinaman.)



State of California,
County of Los Angeles,—ss.

On this 21st day of March, in the year of our Lord one thousand nine hundred and sixteen, before me, J. C. Humphreys, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Yee Chung, personally known to me to be the person whose name is subscribed to the

within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said County, the day and year in this certificate first above written.

(General)

[Seal] J. C. HUMPHREYS,

Notary Public in and for the County of Los Angeles, State of California. [304]

State of California,

County of Los Angeles,—ss.

On this 21st day of March, A. D. 1916, before me, J. C. Humphreys, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared F. Irwin Herron, known to me to be the person whose name is subscribed to the within instrument, as the Attorney-in-Fact of Illinois Surety Company, and acknowledged to me that he subscribed the name of Illinois Surety Company thereto as principal and his own name as Attorney-in-Fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Seal] J. C. HUMPHREYS,

Notary Public in and for Said County and State.

I hereby approve the form of the within bond and the sufficiency of the surety thereon.

Dated March 22*st*, 1916.

BLEDSOE,

Judge of the District Court of the United States, Southern District, Southern Division.

[Endorsed]: Original. No. 911–Criminal. In the United States District Court, in and for the Southern District of California, Southern Division. The United States of America, vs. Yee Chung, Defendant. Appearance Bond on Appeal. Isidore B. Dockweiler & John L. McNab, Suite 502, Douglas Bldg. Office Tel., Main 1320 (Sunset), Home 1320, Los Angeles, Cal. Attorney for Defendants. Removed to 1035 I. N. Van Nuys Bldg. Filed Mar. 22, 1916, at —— min. past 11 o'clock A. M. Wm. M. Van Dyke, Clerk. Murray C. White, Deputy. [305]

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That we, Yee Chung, as principal, and Illinois Surety Company, a corporation, as surety, are held and firmly bound unto the United States of America, in the full and just sum of Two Hundred and Fifty ($250.00) dollars, to be paid to the said United States of *America, certain* attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of March in the year of our Lord One Thousand, Nine Hundred and sixteen.

WHEREAS, lately at a District Court of the United States for the Southern District of California, Southern Division, in a matter depending in said Court, between The United States of America and

Yee Chung, a judgment was rendered against the said Yee Chung, ordering him deported and the said Yee Chung having obtained from said Court an order allowing an appeal to reverse the judgment in the aforesaid matter and a citation directed to the said United States Attorney citing and admonishing him to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said Yee Chung shall prosecute to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

YEE CHUNG. [Seal]

Acknowledged before me the day and year first above written.

ILLINOIS SURETY CO.

[Seal] By F. IRWIN HERRON,

Its Attorney in Fact. **[306]**

State of California,

County of Los Angeles,—ss.

On this 21st day of March in the year of our Lord one thousand nine hundred and sixteen, before me, J. C. Humphreys, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Yee Chung personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County, the day and year in this certificate first above written.

(General)

[Seal] J. C. HUMPHREYS,

Notary Public in and for the County of Los Angeles, State of California.

State of California,
County of Los Angeles,—ss.

On this 21st day of March, A. D. 1916, before me, J. C. Humphreys, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared F. Irwin Herron, known to me to be the person whose name is subscribed to the within Instrument, and the Attorney-in-Fact of Illinois Surety Company, and acknowledged to me that he subscribed the name of Illinois Surety Company thereto as principal and his own name as Attorney-in-Fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Seal] J. C. HUMPHREYS,

Notary Public in and for said County and State.

[307]

[Endorsed]: No. 911–Criminal. United States District Court for the Southern District of *of* California, Southern Division. The United States of America vs. Yee Chung. Bond on Appeal. Form of Bond and Sufficiency of Sureties Approved. Bledsoe, Judge. Filed Mar. 22, 1916, at —— min.

past 11 o'clock A. M. Wm. M. Van Dyke, Clerk. Murray C. White, Deputy. [308]

ORIGINAL.

In the United States District Court, in and for the Southern District of California, Southern Division.

No. 911.

THE UNITED STATES OF AMERICA,

vs.

YEE CHUNG,

Defendant.

Praecipe for Transcript of Record.

You will please prepare the record on appeal to the Circuit Court of Appeals of the United States, Ninth Circuit, said record to contain the following:

1. All testimony heard, taken and transcribed in the above-entitled court in this case, same being filed with you and consisting of stenographer's transcript of testimony.

2. Warrant of the arrest of the defendant on which defendant was ordered deported by United States Commissioner.

3. Commissioner's order of deportation.

4. Notice of appeal from United States Commissioner's order to District Court of the United States.

5. Defendant's Exhibits "A," "B," "C," "D," "E," and "F," all of which are more specifically detailed as to their contents in Exhibit No. 1, attached to this praecipe and made a part thereof, for your further information and convenience.

6. United States Exhibits 1 and 2, all of which are more fully detailed in the attached Exhibit No. 1, for your further information and assistance.

JOHN L. McNAB and
ISIDORE B. DOCKWEILER,
Attorneys for Defendant. **[309]**

Exhibit No. 1.

Defendant's Exhibit "A," endorsed "Filed April 2, 1915. Wm. M. Van Dyke, Clerk, by Leslie S. Colyer, Deputy," is a transcript of the record and proceeding entitled "*In the* United States of America, District of Vermont. United States vs. Yee Chung," which said record shows that said Yee Chung was arrested at Richford, Vt., on the 1st day of January, 1898, on a complaint made by Jno. H. Senter, U. S. District Attorney, charging that he was a person of Chinese descent unlawfully in the United States at the said Richford, Vt., contrary to the statutes of the United States. That said Yee Chung was thereafter tried before Geo. E. Johnson, U. S. Commissioner at Burlington, Vt., and was on the 19th day of January, 1898, after full hearing discharged from custody.

Attached to the transcript of said record is a certificate of said Geo. E. Johnson, U. S. Commissioner, wherein he states that said transcript is a full and true copy of the original complaint, warrant of arrest, judgment, order and decree in the case of said U. S. vs. Yee Chung for violation of the Chinese Exclusion Act (so-called) as same remains of record and on file in his office. Said certificate made at the

City of Burlington, Vt., on the 31st day of October, 1906.

There is also an affidavit of Yee Chung, with picture annexed, attached to said transcript of proceedings, with certificates of identification signed by J. V. Stewart, Chinese Inspector at Seattle, Wash., of said Yee Chung on his departure from the U. S. on Feb. 17, 1907.

Memorandum Re Defendant's Exhibit "B."

Defendant's Exhibit "B," endorsed "Filed April 2, 1915, Wm. M. Van Dyke, Clerk, by Leslie S. Colyer, Deputy," and also endorsed "Filed September 25, 1914. Chas. *M.* Williams, U. S. [310] Commissioner," consists of a certificate dated August 19, 1914, made in the County of King, State of Washington, by Henry M. White, U. S. Commissioner of Immigration, in and for the State of Washington, in and by which said White says that as such officer he is the lawful custodian of all papers, correspondence and records relating to the departure from and return to the United States of Chinese persons traveling via any port in said District; that the attached papers in the case of Yee Chung, bearing endorsements on the face thereof, show that said Chinaman departed from the United States on the 17th day of February, 1907, and that said papers constitute the complete record in said case, taken from the files of his office as the official record of the facts therein cited, and that there is nothing in his files evidencing the return of said Yee Chung to the United States since his departure in 1907.

The papers annexed to said certificate consist of a copy of the transcript of the records in said proceeding of which exhibit "A" is a transcript, also affidavit of Yee Chung, made at the time he presented copy of said papers to J. V. Stewart, Chinese Inspector, identifying him as the person discharged in said Vermont proceeding, on the 17th day of February, 1907, the date of his departure from the United States.

Memorandum Re Defendant's Exhibit "C."

Defendant's Exhibit "C" endorsed "Filed April 2, 1915, Wm. M. Van Dyke, Clerk, by Leslie S. Colyer, Deputy," has been withdrawn, and a certified copy thereof was filed on April 15, 1915, same consisting of a photograph, description and certificate of identification of one Yee Wah, age 17 years, height 4 ft. 11 inches, occupation a student of Pittsburg, Pennsylvania, admitted as a son of Native 12720–8–17 S. S. "Siberia," 6/2/13, same being signed by Samuel W. Backis, Immigration [311] Official in Charge, by "H. B. S.," at the port of San Francisco, Cal., on the 7th day of July. 1913.

Attached to said certificate is a memorandum, reading as follows:

"12720/8–17. In Re Yee Wah, alleged son of a native. July 1, 1913. The alleged father claims to have been returned to the United States from China via Vancouver, B. C., Ex. S. S. "Empress of China," K. S. 23–11 (November or December, 1897) and to have immediately proceeded to the United States via Montreal and Richford, Vt. He presents a court

record of discharge No. 121, issued in his name by the District of Vermont.

The alleged father, it will be noted, was landed at this port No. 47 Manchuria 11/12/1909, by virtue of his previous landing by Commissioner Johnson on January 19, 1897. Manifestly the examining inspector is not satisfied that the essential trip has been absolutely verified, but in my opinion the prior landing, Record No. 47, contains sufficient evidence to show that the alleged father in the present ease is the identical person landed by Court in 1897. Accordingly the essential trip is verified and I recommend admission.

(Signed) A. W. LONG,
Inspector Law Division."

Memorandum Re Defendant's Exhibit "D."

Defendant's Exhibit "D," endorsed "Filed April 2, 1915. Wm. M. Van Dyke, Clerk, by Leslie S. Colyer, Deputy," was withdrawn, and a certified copy thereof filed on April 15, 1915, same consisting of a photograph, description and certificate of identification of one Yee Lai, age 16 years, height 4 ft. 11 in., by occupation a student of Homestead, Penna., admitted as son of native No. 13035/3–9, S. S. "China," 11/10/13, signed by H. [312] Edsell, Immigration Official in Charge, by "H. G. S.," at the port of San Francisco, Cal., December 30, 1913.

Memorandum Re Defendant's Exhibit "E"—Report of Charles D. Mayer, Inspector, in Re Yee Chung.

Defendant's Exhibit "E," endorsed "Filed April 2, 1915, Wm. M. Van Dyke, Clerk, by Leslie S. Colyer, Deputy," consists of the following documents:

"December 13, 1909.

Inspector in Charge, C. D., I. S.,
San Francisco, Cal.

IN RE Yee Chung, Native C. R.,
47 Manchuria, 11/12/1909.

I have to report as follows: This applicant presents a transcript of a record of Commissioner Johnson, District of Vermont, without a photograph attached, showing that a Chinaman of the same name was discharged by said Commissioner Jan. 19, 1897, and the ground of the discharge is not shown, but in view of the fact that it appears that the respondent in that case entered the United States at Richford, Vermont, and was subsequently taken to Burlington where he was discharged by Commissioner Johnson, I am satisfied that he was discharged on the ground of birth in the United States, because had he set up any other claim, such claim would have been investigated at the port of Richford.

According to the report of the Inspector in charge at Richford, dated November 26, 1909, there is no testimony in Commissioner Johnson's record of the case at the time of the discharge of said respondent, and the Commissioner's records consist simply of

the docket entries, complaint, warrant, etc. [313]

By the telegram of the Inspector in charge at Richford, dated December 19, 1909, in reply to telegram of this office of December 7, 1909, it appears that the transcript of the record presented by this applicant is genuine. Considering the lapse of time since the applicant claims to have been arrested and discharged by Commissioner Johnson, I am reasonably satisfied by his examination that he is the respondent Yee Chung discharged by Commissioner Johnson January 18, 1897.

Although he claims that he distinctly remembers the Commissioner who discharged him, and the description he has given of such commissioner by no means shows him to have been Commissioner Johnson, I think it would be unreasonable to hold the applicant too strictly to this description in view of the twelve years that have elapsed since his alleged discharge.

In view of the foregoing, I recommend landing.

All papers herewith.

Respectfully,

(Signed) CHAS. D. MAYER,

Inspector."

Memorandum Re Defendant's Exhibit "E"—Letter, November 26, 1909, Weeks to Commissioner at San Francisco.

"The Commissioner at San Francisco:

From the Office of the Chinese Inspector at Rutland, Vermont, Nov. 26/09.

Your letter states that Commissioner Johnson died in Burlington, Vermont, in November, 1907, and

that the records and dockets are in the custody of the Clerk of the United States Court at Rutland, Vermont. **[314]**

* * * It is noted that this applicant alleges that he was discharged on December 31st, 1897. During this time and until Jas. M. Martin was appointed United States attorney in 1898, the dockets of Commissioner Johnson only show the dates of the hearings and that the respondent was discharged, there being no transcript of testimony taken at that time, nor record. Simply the docket entries, complaint, warrant, etc. Photograph was not attached to any of the papers at that time, and only in very rare instances was a photograph attached to Commissioner Johnson's docket at later dates.

(Signed) ARTHUR L. WEEKS,
Chinese Inspector in Charge."

Memorandum Re Defendant's Exhibit "F"—Letter, August 13, 1914, Williams to Clerk, U. S. District Court, District of Vermont.

Defendant's Exhibit "F," endorsed "Filed April 2, 1915, Wm. M. Van Dyke, Clerk, by Leslie S. Colyer, Deputy," consists of the following letters:

"August 13, 1914.

"Clerk U. S. District Court,
District of Vermont,
Rutland, Vt.

"Sir: You will please find enclosed herewith what purports to be a certified copy of a record of discharge issued by one Geo. E. Johnson, U. S. Commissioner residing at Burlington, Vermont, in the mat-

ter of a Chinese person named Yee Chung, said discharge being dated Jan. 19, 1898, and the certified copy dated Oct. 31, 1906. **[315]**

"There is attached to said certified copy an affidavit of Yee Chung, to which is attached a photograph which is a fair likeness of said Yee Chung, who is now under arrest in this district under the name of Yee Chong and the case is pending before me.

"I would thank you to compare the seal and signature of said Geo. E. Johnson, U. S. Commissioner, presented, with that on file in your office, as I understand that Johnson is now dead, and that all of his official records as Commissioner are on file in your office.

"Also ascertain, if possible, under what status said Yee Chung was discharged, whether as merchant, minor son of merchant, or native.

"Also what bond was furnished for appearance of said Yee Chung, and who the sureties were.

"Also what witnesses testified on behalf of said Yee Chung.

"Also, if possible, secure transcript of testimony which was offered in the case before Commissioner Johnson, and forward same to me for court purposes. Said transcript will be returned to you when it has served its purpose.

"Also ascertain the number of copies of the record issued by Commissioner Johnson, and to whom.

"Any other matter which will throw light on this case will be appreciated.

"The Immigration authorities in this city have requested their Boston office to make an investigation

in this case, and it is suggested that you hold the papers transmitted herewith until their office has had an opportunity to examine the papers sent you, after which please return to me with report of your investigations. **[316]**

"Thanking you in advance, I remain

"Respectfully,

"(Signed) CHAS. N. WILLIAMS,

"U. S. Commissioner, Southern District of California.

Memorandum Re Defendant's Exhibit "F"—Letter, 8/18/1914, Platt to Williams.

"OFFICE OF THE CLERK OF THE DISTRICT COURT OF THE UNITED STATES. DISTRICT OF VERMONT.

Frederick S. Platt,
Clerk. Rutland, 8/18/1914.

Chas. N. Williams, Esq.,
U. S. Commissioner,
Los Angeles, Cal.

My dear Sir: I have your letter of Aug. 13th enclosing papers. The copy of record is undoubtedly genuine. The signature and seal attached thereto are the genuine signature and seal of former U. S. Commissioner Geo. E. Johnson, of the District of Vermont.

A photograph of the respondent is not attached either to the record or docket entries of former U. S. Commissioner Johnson. There is nothing in either the record or the docket or upon the papers filed in the case to show the reason of the discharge of the

respondent. There is nothing to show that any bond was furnished for the appearance of the respondent. There is nothing from which I can give names of the witnesses either for the United States or for the respondent.

I do not know of any way to obtain a transcript of the evidence **[317]** in any case tried by Commissioner Johnson prior to May, 1898.

There is nothing to show how many copies of the record were issued by Commissioner Johnson, nor to whom such copies were issued.

I do not like to keep such papers as you enclosed to me for the reason that they do not belong in this office, but inasmuch as you state that the Immigration officials from Boston are likely to come here and investigate the matter, I will keep them for a reasonable time.

I do not understand how my statements made in this way can be considered by a court, but inasmuch as you have called for them, I am writing this letter.

I trust that I may soon be directed how to dispose of the papers which you have sent me.

Very truly yours,

(Signed) F. S. PLATT."

Memorandum Re Defendant's Exhibit "F"—Letter, 8/18/1914, Platt to Williams.

"OFFICE OF THE CLERK OF THE DISTRICT COURT OF THE UNITED STATES,
DISTRICT OF VERMONT.

Frederick S. Platt,
Clerk.

Rutland, 8/18/1914.

Chas. N. Williams, Esq.,
U. S. Commissioner,
Los Angeles, Cal.

My dear Sir: Mr. Sullivan, from the office of the Chinese Inspector at Boston, has been to this office and examined into the Yee Chung case mentioned in your letter to me of August 13th. **[318]**

I am herewith returning to you the certified copy of the record in the case, with photograph, etc., which were attached, and which were forwarded to me in your letter of Aug. 13th. Will you kindly acknowledge receipt of the same.

Since I wrote you on Aug. 18th, I have made further examination of the copy of the record which you sent me, and of the original record in the case now in this office. Beyond any possible question, the original record is a carbon copy of the papers certified to by Mr. Johnson as a copy of the record. I have learned that when Mr. Johnson made a record it was his custom to make it in duplicate. One of the papers he certified as the record, and the other the copy, and forwarded it to anyone who desired a certified copy of the record.

It is evident, therefore, that the copy of the record which you sent me, and which I am herewith returning, is the one that was made at the same time the original record was made. I am sure of this because each line and page of the enclosed copy of record exactly corresponds with the original record, and where there are any defects in the workmanship the same defects appear both in the original record and the enclosed copy.

If you will look at the second page of the record at the line under the signature of Mr. Johnson, "FOR THE DISTRICT OF VERMONT," and the broken line below, the original record is an exact counterpart of the enclosed.

I am therefore convinced that the enclosed copy of record is genuine, and is the one that was made by former Commissioner Johnson when the original record was made.

Very truly yours,
(Signed) F. S. PLATT,
Clerk." **[319]**

Memorandum Re U. S. Exhibit No. 1.

United States Exhibit No. 1, endorsed "Filed May 21, 1915, Wm. M. Van Dyke, Clerk, by G. F. Gibbon, Deputy," is a copy of the original certificate dated March 8, 1915, signed by John Zurbrick, Inspector in Charge, U. S. Immigration Service, Vancouver, B. C., together with record of his office in the case of Yee Kim Shing, said copy being duly certified to at Washington, D. C., on the 17th day of March, 1915, by Alfred U. Hampton, Acting Com-

missioner of General Immigration; with a certificate attached of Louis F. Post, Asst. Secretary of Labor, certifying that at the time same was made, the said Alfred U. Hampton was such Acting Commissioner of General Immigration.

Memorandum Re U. S. Exhibit No. 2.

United States Exhibit No. 2, endorsed "Filed April 2, 1915, Wm. M. Van Dyke, Clerk, by Leslie S. Colyer, Deputy," is a certified copy of certain docket entries in the matter entitled, "United States Court, District of Vermont. United States vs. Yee Chung." Said copies were made and certified to by Fred G. Swinnerton on the 20th day of August, A. D. 1908, and the same consists of the original complaint and warrant of arrest in said case, with the officer's return and the filing endorsed thereon, returned into Court by former Commissioner Geo. E. Johnson, at the expiration of his term of office, as same now remains on file in the Clerk's Office, at Rutland, Vermont.

There is also another paper marked United States Exhibit No. 2, which is endorsed "Filed May 21, 1915, Wm. M. Van Dyke, Clerk, by T. F. Green, Deputy," same purporting to be **[320]** questions propounded by W. A. Brazie, Examining Inspector, at 4:30 P. M. on July 14, 1914, through Chinese Interpreter Chas. Levy, to one Yee Chung under investigation, and said Yee Chung's answers thereto.

[Endorsed]: Original. No. 911. In the United States District Court in and for the Southern District of California, Southern Division. The United States

of America vs. Yee Chung. Praecipe. Service of the within Praecipe is hereby admitted this 23 day of March, 1916. Clyde R. Moody, Asst. U. S. Atty., Attorney for U. S. Isidore B. Dockweiler & John L. McNab, Suite 502 Douglas Bldg. Office Tel., Main 1320 (Sunset), Home 1320, Los Angeles, Cal., Attorneys for Defendant. Removed to 1035 I. N. Van Nuys Bldg. Filed Mar. 23, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. **[321]**

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 911—CRIM.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

YEE CHUNG,

Defendant.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing three hundred and twenty-one (321) typewritten pages, numbered from 1 to 321, inclusive, to be a full, true and correct copy of the Warrant of Arrest Issued by U. S. Commissioner, Notice of Appeal from U. S. Commissioner's Order of Deportation, Order Affirming U. S. Commissioner's

Order of Deportation, Memorandum Opinion of Court Affirming Commissioner's Order of Deportation, Transcript of Testimony, Exhibits filed on behalf of U. S., Exhibits filed on behalf of Defendant, Notice of Appeal to U. S. Circuit Court of Appeals, Petition for Appeal, Assignment of Errors, Order Allowing Appeal, Appearance Bond on Appeal, Bond on Appeal, and Praecipe for Transcript on Appeal, in the above and therein entitled cause, and that the same together constitute the Transcript on Appeal of Yee Chung herein, in accordance with the Praecipe for Preparation of Transcript filed in my office on behalf of the appellant by his attorneys of record. **[322]**

I do further certify that the cost of the foregoing Transcript on Appeal is $163.30, the amount whereof has been paid me by Yee Chung, the appellant.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court of the United States of America, in and for the Southern District of California, Southern Division, this 24th day of May, in the year of our Lord, one thousand nine hundred and sixteen and of our Independence, the one hundred and fortieth.

[Seal] WM. M. VAN DYKE,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By Leslie S. Colyer,
Deputy Clerk.

[Ten Cent Internal Revenue Stamp Canceled. 5/24/16. L. S. C.] **[323]**

[Endorsed]: No. 2799. United States Circuit Court of Appeals for the Ninth Circuit. Yee Chung, Appellant, vs. The United States of America, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed June 1, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.
By Paul P. O'Brien,
Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

(No. 911—CRIM. S. D.)

YEE CHUNG,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Order Extending Time to July 1, 1916, to Docket Cause and File Record.

Good cause appearing therefor, it is hereby ordered that the time within which appellant in the above-entitled action may file record and docket cause in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same hereby is extended to and including the 1st day of July, 1916.

Los Angeles, March 27th, 1916.

BLEDSOE,
District Judge.

[Endorsed]: No. 2799. United States Circuit Court of Appeals for the Ninth Circuit. Yee Chung, Appellant, vs. The United States of America, Appellees. Order Extending Time to Docket Cause and File Record. Filed Apr. 3, 1916. F. D. Monckton, Clerk. Refiled Jun. 1, 1916. F. D. Monckton, Clerk.

At a stated term, to wit, the October term, A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Thursday, the first day of June, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

No. 2799.

YEE CHUNG,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Order Directing the Giving of Bond for Appearance of Appellant in the United States Court of China.

On motion of Mr. John L. McNab, counsel for the appellant, IT IS HEREBY ORDERED:

That the appellant, Yee Chung, be and he is hereby permitted to depart from the United States and go to China upon his giving and executing a bond in the

penal sum of Twenty-five Hundred ($2500.00) Dollars, to be approved by Francis Krull, United States Commissioner for the Northern District of California, guaranteeing that in case the judgment of the District Court of the Southern District of California, Southern Division thereof, rendered herein, be affirmed by this Court the appellant will, immediately upon the judgment of this Court becoming final, surrender and present himself to the United States Court for China, at Shanghai, China, in satisfaction of the judgment of this Court and of the order of deportation made against the appellant.

IT IS FURTHER ORDERED, that the bond hereby directed to be given shall be in lieu of the bond already given by the appellant, to appear herein, and instead thereof; and

IT IS FURTHER ORDERED, that upon the said Yee Chung presenting and surrendering himself to the United States Court of China, pursuant to the terms of this order, in case of the affirmance of said judgment by this Court, such surrender to said United States Court for China shall be a satisfaction of the judgment of this Court and of the order of deportation, without the necessity of the said Yee Chung returning to the United States for the purpose of being formally deported and that upon such surrender, certified to this Court by the Clerk of the United States Court for China, the surety on the bond of the appellant to appear be discharged from further liability.

Recognizance for Bail.



KNOW ALL MEN BY THESE PRESENTS: That we, Yee Chung, as principal, and the National Surety Company, a New York corporation, having its principal place of business at New York, New York, authorized under the provisions of Act of Congress approved August 13, 1894, as amended by the Act of Congress, approved March 23, 1910, to become sole surety upon recognizances, stipulations, bonds or undertakings, and licensed by the State of California, as sole surety, are held and firmly bound unto the United States of America in the full and just sum of TWO THOUSAND FIVE HUNDRED and 00/100 ($2500.00) DOLLARS, to be paid to the

United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 1st day of June, in the year of our Lord one Thousand Nine Hundred and Sixteen.

WHEREAS, lately at a District Court of the United States for the Southern District of California, Southern Division, in a matter depending in said Court, between the United States of America and Yee Chung, a judgment was rendered against the said Yee Chung ordering him deported from the United States to China, the country from whence he came, and the said Yee Chung having obtained from said Court an order allowing an appeal to reverse the judgment in the aforesaid matter and a citation directed to the United States Attorney for the Southern District of California, citing and admonishing him to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, in the State of California; and

WHEREAS, on the 21st day of March A. D. 1916, the said Yee Chung did pursuant to an order of said District Court fixing his bail pending the determination of said appeal in the sum Two Thousand Five Hundred Dollars file his undertaking for bail in the sum Two Thousand Five Hundred Dollars with the Illinois Surety Company, as sole surety thereon, and subsequently to wit, on the 19th day of April, A. D. 1916, the said Illinois Surety Company was pursuant to an order of the Superior

Court of the County of Cook, State of Illinois, at Chicago, declared insolvent and a Receiver appointed to take charge of the assets thereof, and the said Yee Chung, as principal, at this time desires to substitute, in lieu of the undertaking for bail heretofore filed in said proceeding, this bond executed by himself, as principal, and the National Surety Company, as sole surety; and

WHEREAS, lately at a United States Circuit Court of Appeals for the Ninth Circuit an order was made permitting the said Yee Chung to depart the limits of the United States of America and to journey to the Republic of China in the pursuance of the conduct of his business and to surrender himself in execution of the judgment appealed from to the United States Court for China at Shanghai, Republic of China, if the judgment order shall be affirmed or said appeal be dismissed.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the said Yee Chung shall appear, either in person or by attorney, in the said United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said Court and prosecute his said appeal and shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in execution of the judgment appealed from as said Court may direct, if the judgment ordering him deported shall be affirmed; or the said appeal be dismissed; or shall surrender himself in execution of the judg-

ment appealed from to the United States Court for China at Shanghai, Republic of China, if the judgment ordering him deported shall be affirmed or the said appeal be dismissed, during the pendency of his present business trip to the Republic of China and before the departure of Yee Chung with intent to return to the United States from any port of the Republic of China; and if he shall appear for trial in the said District Court of the United States for the Southern District of California, Southern Division, on such day or days as may be appointed for the retrial by said District Court, and abide by and obey all orders made by said Court, provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void; otherwise, to remain in full force, virtue and effect.

YEE CHUNG,
Principal.
NATIONAL SURETY COMPANY.
[Seal] By C. T. HUGHES,
Its Attorney in Fact.

Taken and acknowledged before me the day and year first above written.

[Seal] FRANCIS KRULL,
United States Commissioner North'n Dist. of California.

The foregoing bond is hereby approved.

[Seal] FRANCIS KRULL,
United States Commissioner, North'n Dist. of California.

[Endorsed]: No. 2799. In the Circuit Court of Appeals of the United States, Ninth Circuit. United States of America, Appellee, vs. Yee Chung, Appellant. Recognizance for Bail. Filed Jun. 1, 1916. F. D. Monckton, Clerk.

Stipulation for Costs on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That we, Yee Chung, as principal, and National Surety Company a New York corporation having its principal place of business at New York, New York, authorized under the provisions of Act of Congress approved August 13, 1894, as amended by the Act of Congress, approved March 23, 1910, to become sole surety upon recognizances, stipulations, bonds or undertakings, and licensed by the State of California, as sole surety, are held and firmly bound unto the United States of America in the full and just sum of TWO HUNDRED AND FIFTY ($250.00) DOLLARS, to be paid to the said United States of America, its certain attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 1st day of June in the year of our Lord One Thousand Nine Hundred and Sixteen.

WHEREAS, lately at a District Court of the United States for the Southern District of California, Southern Division, in a matter depending in said Court, between United States of America and Yee Chung, a judgment was rendered against the said Yee Chung ordering him deported from the

United States of America to China, the country from whence he came, and the said Yee Chung having obtained from said Court an order allowing an appeal to reverse the judgment in the aforesaid matter and a citation directed to the United States Attorney citing and admonishing him to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, in the State of California; and

WHEREAS, on the 21st day of March A. D. 1916, the principal herein made, executed and filed in the office of the Clerk of the District Court of the United States for the Southern District of California, Southern Division, his bond or undertaking for costs on appeal, with the Illinois Surety Company as surety thereon and, subsequently, to wit, on the 19th day of April, A. D. 1916, upon petition of its creditors an order was made in the Superior Court of the County of Cook, State of Illinois, wherein and whereby it was adjudged that the Illinois Surety Company was and is insolvent and a Receiver was appointed to take charge of the property and effects of the Illinois Surety Company and, at this time, the said principal herein, Yee Chung, makes and files this, as his bond or undertaking for costs, with the National Surety Company, the surety herein, in lieu and place of the bond wherein the Illinois Surety Company is surety, effective as of the date of the execution of the bond wherein the Illinois Surety Company is surety, namely, effective as of March 21st, 1916.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the said Yee Chung shall prosecute his appeal to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

YEE CHUNG.

NATIONAL SURETY COMPANY,

[Seal] By FRANK L. GILBERT,

Its Attorney in Fact.

Taken and acknowledged before me the day and year first above written.

[Seal] FRANCIS KRULL,

United States Commissioner, North'n Dist. of California.

[Endorsed]: No. 2799. In the Circuit Court of Appeals of the United States, Ninth Circuit. United States of America, Appellee, vs. Yee Chung, Appellant. Stipulation for Costs on Appeal. Filed June. 1, 1916. F. D. Monckton, Clerk.

No. 2799

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

YEE CHUNG,
Appellant,

vs.

THE UNITED STATES OF AMERICA,
Appellees.

BRIEF FOR APPELLANT.

JOHN L. McNAB,
ISADORE B. DOCKWEILER,
Attorneys for Appellant.

Filed
SEP 19 1916
F. D. Monckton
Clerk

Filed this.....day of September, 1916.

FRANK D. MONCKTON, Clerk.

By.....Deputy Clerk.

PERNAU PUBLISHING COMPANY

No. 2799

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

YEE CHUNG,
Appellant,

vs.

THE UNITED STATES OF AMERICA,
Appellees.

BRIEF FOR APPELLANT.

Preliminary Note.

The appellant in this case offered overwhelming proof that he was born at 728 Sacramento Street, San Francisco, in 1880. Seven uncontradicted witnesses, one being a white man, six being leading Chinese merchants of San Francisco and one having been for twenty-five years and being at the time of the trial the personal servant of the U. S. Commissioner of Immigration, established that the appellant was the child born in San Francisco and the Government has not attempted to refute this proof.

The appellant is the holder of a judgment of a U. S. Commissioner issued in 1897 discharging

him as a native of the United States. The very Immigrant Inspector called as a witness to question the accuracy of the appellant's description of the U. S. Commissioner who discharged him had theretofore written the opinion and made the order approving his status of a native on the ground that he was undoubtedly the person described in the judgment.

Further, his status as a native has been four times expressly recognized by the U. S. Immigration officials—twice on his departure from the country on visits to China and twice on the bringing in of his two sons, now in school at Pittsburg, Pennsylvania (46).

The alleged discrepancies upon which the Court relied to defeat the appellant's claim are relatively few and unimportant; the consequences of an affirmance are so disastrous—banishment from the country of a man who has admittedly followed peaceful pursuits in this country, undisturbed for nineteen years, to be followed by expulsion of two minor sons now in American schools,—that counsel earnestly appeal to the Court for a critical examination of the somewhat lengthy record. To this end counsel have done their utmost to assist the Court by painstaking analysis of the testimony.

Statement of Facts.

The appellant was arrested by W. A. Brazie, a Chinese Inspector, while standing at the Southern

Pacific Railroad Station in Los Angeles, July 14, 1914 (Tr. 18). He was taken to the Immigration Office in the Federal Building immediately and his statement taken in the absence of counsel (Tr. 18). On being arrested he declared that he was a native born citizen of the United States, having been born in San Francisco, California (Tr. 20).

On the trial the appellant testified at great length and called seven Chinese and a white witness and introduced documentary evidence consisting of a judgment of U. S. Commissioner George E. Johnson, U. S. Commissioner of the District of Vermont, showing that he had on the 19th day of January, 1898, after full hearing, discharged the appellant (Tr. 278).

The Government, on the hearing before the U. S. Commissioner doubted that the judgment held by the appellant was even an authentic judgment and questioned the authenticity of the various papers held by the appellant. On stipulation of counsel they were transmitted to the Clerk of the District Court of Vermont and were returned by the Clerk with a letter showing them to be genuine and correct in every particular (see statement of counsel, Tr. 38); letter of U. S. Commissioner, Los Angeles to Clerk of the District Court of Vermont (Tr. 335); and letter of the Clerk in reply assuring the Commissioner of their genuine character (Tr. 337-8).

Statement of Facts (Continued).

CHRONOLOGICAL HISTORY OF YEE CHUNG AND HIS WHEREABOUTS FROM BIRTH, AS GIVEN BY HIMSELF.

Yee Chung, the appellant, was born Feb. 17th, 1880, at 728 Sacramento Street, San Francisco (*Tr. 25, corroborated by witnesses, see Tr. 172-208-202-184-196-119-106*). He was the son of Yee Kim Sing and Wong Shee, who are both still alive and now in China (Tr. 26). Yee Kim Sing the father was bookkeeper for and member of the mercantile firm of Quong Woh Chong at 728 Sacramento Street. The father and mother went to China in 1881 taking the appellant, then a child of about two years, with them (Tr. 27). The father remained in China only a few months, returning to San Francisco, leaving the mother and the appellant in China (Tr. 27). Yee Chung remained in China until he was about 18 (Tr. 27) when he returned to the United States—in 1897—by way of Vancouver, B. C.; thence to Montreal; thence to Burlington, Vermont; at which latter place he was arrested and taken before the United States Commissioner George E. Johnson. He was given a hearing and was discharged on the ground that he was a native of the United States (Tr. 294-295, report of Inspector Mayer). The original judgment went down with the appellant's trunk on the steamship "Dakota" when she sank on a trip to China leaving Seattle Feb. 18th, 1907 (Tr. 36). The Government made no question concerning the accuracy of the testimony of the appel-

lant relating to this or any other voyage, nor as to the fact that appellant was such passenger. A certified copy of the judgment was introduced and is in the record (Tr. 276-279).

Yee Kim Sing the father had, during the absence of Yee Chung in China as a child, sold out his interest in the business in San Francisco and had gone into business at Boston, Mass., with the general merchandise firm of Sam Sing Company (Tr. 30). The father came on to Burlington from Boston when the appellant was brought on for hearing before Commissioner Johnson and was a witness at the hearing (Tr. 31). After his discharge by Commissioner Johnson the appellant went with his father to Boston where he remained only a few days and was sent by his father to Carnegie, Pennsylvania, where he lived for about ten years (Tr. 31). At the end of this period the appellant went to China via Seattle on Feb. 18th, 1907 (Tr. 31-33). (See also the papers presented to the Immigration Inspector at Seattle, Tr. 275.) On his departure from Seattle and applying for the right to return the appellant presented his own affidavit, the record of U. S. Commissioner Johnson containing the judgment and the affidavit of two white witnesses and one Chinese witness, certifying to their belief in the facts and to his residence for a long period of time (Tr. 273-6). The Steamer "Dakota" was wrecked en route and sinking carried down with appellant's trunk certain

papers. Other papers the appellant had in his pocket (Tr. 37).

The appellant remained in China until about October, 1909 (Tr. 39). Prior to appellant's return to the United States the first time, namely in 1898, when he was discharged by Commissioner Johnson, he had married (Tr. 39). This marriage took place a little over a year before his departure for the United States and prior to his departure for this country there was born to him a son (Tr. 39) and a second son was born to his wife after his return to the United States (Tr. 40). The first son was born about July 5th, 1897, and the other about the 25th of July, 1898. On his return to the United States on this second trip in 1909 he landed at the port of San Francisco about Nov. 12th, 1909 (Tr. 41), and had with him the transcript of the Johnson judgment, together with the other affidavits produced by him prior to his departure (see defendant's exhibit "A", Tr. 273-280). After landing he went to Homestead, Pennsylvania.

To summarize thus far appellant had two landings in the United States:

> First at Vancouver, B. C., when he was arrested and discharged by Commissioner Johnson in January, 1898. (Tr. 276.) Second at San Francisco on the SS. "Manchuria" Nov. 12th, 1909. (Tr. 41.)

Subsequent to his return in 1909 the appellant who was residing in Pennsylvania brought his two

sons to the United States. The eldest named Yee Woh came first and was followed by the younger son, Yee Lai (Tr. 41). Both of these sons were landed as the minor sons of a native of the United States. (See Defendant's exhibits "C" and "D", Tr. 291 and 293 with photographs attached.)

The Court's attention is respectfully urged to the following quotations from the Immigration Record's relative to the landing of Yee Woh, eldest son (Tr. 291):

> The alleged father claims to have returned to the United States from China by Vancouver * * * and to have immediately proceeded to the United States via Montreal to Richford, Vermont. He presents court record of the discharge No. 121 issued in his name by the Court of Vermont. The alleged father, * * * was landed at this port No. 47 "Manchuria" Nov. 12, 1909, by virtue of his previous landing Commissioner Johnson Jan. 19th, 1897 * * * *in my opinion the prior landing record No. 47 contains sufficient evidence to show that the alleged father in the present case is the identical person landed by the Court in 1897. Accordingly, the essential trip is verified and I recommend admission.*

It will be noted therefore that the inspector of the law division distinctly passed upon the evidence as to Yee Chung being the identical person named in Commissioner Johnson's record in the same proceedings.

The investigating interpreter made the following rather remarkable report commendatory of the appellant:

> The alleged father, Yee Chung, *stated his testimony in a candid and frank way corroborating all of his alleged son's statements in a most minute manner so that I feel impressed that the truth was told.* The witness Yee Wing also made a statement which corresponds in its entirety to all testimony given by Yee Wah. *On account that all testimonies were given in such a frank way and corroboratively implying the truth, I think I feel justified to ask a favorable consideration concerning the admission.* (Tr. 291-2.)

The certificate of identification of the elder son Yee Woh (Tr. 291) and of the younger son Yee Lai (Tr. 293) certify that they are sons of a native and that they have made satisfactory proof concerning their status (see photographs of original certificate, Tr. 290-293).

When the appellant Yee Chung returned to San Francisco in 1909 on voyage 46 "Manchuria" his case was considered by Charles D. Mayer, Chinese Inspector. This same Charles D. Mayer was a witness called by the Government in the District Court in this case, apparently, to testify, that the appellant's description of the U. S. Commissioner was not accurate, Inspector Mayer having been familiar with the appearance of Commissioner Johnson. It becomes important therefore to note that Inspector Mayer in admitting the appellant to the United States and landing him on the aforesaid trip No. 47, in 1909, considered the whole question, and passing upon the judgment of Commissioner Johnson reported as follows:

> "The ground of the discharge is not shown but in view of the fact that it appears that the respondent in that case entered the United States at Richford, Vermont, and was consequently taken to Burlington, where he was discharged by Commissioner Johnson, I am satisfied that he was discharged on the ground of birth in the United States, because had he set up any other claim such claim would have been investigated at the port at Richford."

After certifying to the authenticity and genuineness of the record Inspector Mayer proceeds as follows:

> "Considering the lapse of time appellant claims to have been arrested and discharged by Commissioner Johnson, *I am reasonably satisfied from his examination* that he is the respondent Yee Chung, discharged by Commissioner Johnson, Jan. 18th, 1897."

And discussing his description of the United States Commissioner who discharged him, Inspector Mayer, who was familiar with Commissioner Johnson ends his opinion as follows:

> "I think it would be unreasonable to hold the appellant too strictly to this description in view of the twelve years that have elapsed since his alleged discharge. In view of the foregoing I recommend landing."

In addition, therefore, to the two landings and recognitions of the U. S. Government, the status of Yee Chung was twice recognized and approved in the landings of his sons, as above set forth.

Therefore the status of Yee Chung as a native of the United States has been one judicially deter-

mined by the U. S. Commissioner and four times recognized and approved by the U. S. Immigration officials.

On the arrival of the sons they were taken to Pittsburg, Pennsylvania, where they entered a school for the purpose of learning the English language and they are still there (Tr. 46).

Yee Kim Sing, the father of the appellant, went to China after closing out his business in Boston and has never returned to the United States (Tr. 46-48).

On the hearing in the District Court seven witnesses were called to support the proof offered by Yee Chung as to his birth in San Francisco and his various trips to China.

The Government relies for deportation on certain claimed inaccuracies and discrepancies in the testimony of the appellant and upon the production of certain Canadian records of the arrivals at the port of Vancouver, during the year 1898, and covering the period of time when Yee Chung testified that he arrived at Vancouver and went by way of Montreal to Burlington, where he was arrested. These records were produced by the witness Joliffe (Tr. 136) who had but a very recent acquaintance with Canadian records and testified to having no knowledge of the manner in which the records were kept in 1897. The burden of this testimony was that there were 305 Chinese landed on the "Empress of Japan" October, 1897,

and 177 on the next succeeding steamer. Out of the 305 landing on the "Empress of Japan" there were two Chinese named "Yee Chung" but none of that name on the subsequent voyage. It is the contention of the Government that neither of the persons named Yee Chung answers to the description of appellant; but in answer to the contention of appellant's attorneys in the Court below that there were many out of the hundreds of the Chinese on board who did answer to the description of the appellant, the Court examined the records and announced as follows (Tr. 154):

> The COURT. It is apparent from these manifests that a number of individuals ranging from 16 to 17 or 18 entered this port at this time, none of them, however, by the name of Yee Chung.
>
> Mr. MCNAB. That fact, as stated by the Court, will be admitted, will it gentlemen?
>
> Mr. SCHOONOVER. Certainly.

(The appellant at the time of this landing was nearly eighteen.)

This evidence, furnished by the Canadian records, will be subsequently examined and discussed.

Argument on the Facts.

The foregoing statement of facts, gives a running narrative from the testimony of appellant himself, which we contend was not in anywise disproved or even impaired by any testimony introduced by the Government. The Judge of the Dis-

trict Court, however, in writing his opinion, used the following language:

> "There is considerable evidence adduced by Chinese witnesses (the learned Judge failed to note that there was also a white witness) to the effect that the aforesaid Yee Kim Sing had a son born to him in San Francisco, at the time alleged by defendant herein, and some evidence of some Chinese witnesses to the effect that the defendant, Yee Chung, is that son."

We here assert, with the utmost emphasis, that not only is their *some* evidence, as stated by the Court, but there is absolutely convincing evidence to that effect *and absolutely none to the contrary.* The Court then proceeds:

> "The whole question in the case, however, centers about a determination of the defendants that he is the individual named Yee Chung, who was adjudged to be rightfully in the United States."

While we meet the Government squarely on the issue that Yee Chung is the person named and described in the judgment of Commissoner Johnson, yet the learned Judge of the District Court below is in error when he states that that issue is determinative in the case. While proofs might be offered in a given case to destroy the validity of a record and thereby impair the credibility of a witness, yet if the applicant establishes by undisputed and unassailed testimony of seven witnesses that he was born in San Francisco, no Court is authorized to reject such testimony, and order the deportation

of the defendant. On a somewhat similar state of facts, but much less persuasive, the Circuit Court of Appeals of the Sixth Circuit, in Pang Sho Yin v. United States, 154 Fed. 660, overruled the District Court in ordering deportation of a Chinese claiming citizenship.

THE TESTIMONY OF SEVEN WITNESSES ESTABLISHING THE FACT THAT APPELLANT, YEE CHUNG, IS THE SON OF YEE KIM SING AND WAS BORN AT 728 SACRAMENTO STREET, SAN FRANCISCO, IS NEITHER DISPUTED NOR ASSAILED.

It may be remarked, without the slightest fear that the U. S. Attorney will question the statement, that the witnesses produced on behalf of the appellant in the Court below were of the very highest and most reputable class of Chinese. Among them were several merchant princes of San Francisco whose business is measured by millions and whose revenue to the United States Government reaches enormous sums every year. Nothing could induce merchants of this description to lend their voices to perjury. In the experience of counsel, no Chinese claiming to be a citizen of this country has supported himself by the testimony of witnesses more nearly beyond reproach; nor is there the slightest doubt in the minds of the appellant's counsel, that appellant is, as he claims to be, a native of the United States.

In addition to the merchant witnesses, the personal servant of General Backus, at that time United States Commissioner of Immigration at

the Port of San Francisco was produced. He had been such servant for nearly a quarter of a century. All of these witnesses were taken through their many voyages to China and back, testified to the dates of their trips and the times that they met Yee Chung and his family. The records of the Immigration Department were before the U. S. Attorney. In not a single instance was an attempt made to dispute one of these witnesses as to the date of a single voyage; that he was a passenger; that he departed and returned on the dates given. Nor could such assault be successfully made.

In the following summary the Court is earnestly invited to the peculiar reasons for the recollection of the witnesses. The custom of shaving the infant one month from birth, on which occasion a feast is given by the parents to all the friends of the family, is dwelt upon with particularity, and the restaurant,—a famous hostelry in San Francisco,—is described where this feast took place. The various gifts sent back by leading Chinese merchants to the home country to be delivered to the wife and child, from the father, are narrated, and the specific vessels upon which the trips were made are named. In fact nothing was omitted to throw open to the Government the full scope of its powers of investigation that it might have adequate opportunity to determine whether these Chinese were speaking the truth or not. The testimony of the personal servant of the U. S. Commissioner alone, would have been sufficient to establish the case of the appellant.

This Chinese would not have dared to give testimony relative to such vital matters unless it was strictly in accord with the truth and could be corroborated by the Immigration records in the custody of his master; yet not the slightest attempt was made, although weeks were allowed for the purpose of investigation, to dispute a single element of this testimony.

TO SUMMARIZE THE TESTIMONY ON THE QUESTION OF BIRTH.

Yee Ying Dock. Was born in San Francisco, at 741 Sacramento Street (Tr. 117). His father was a merchant having a store diagonally across the street from the store in which Yee Kim Sing (the father of the appellant) worked (Tr. 118). The witness left for China in 1897 and prior to his departure Yee Kim Sing and his wife had no child (Tr. 118). Yee Kim Sing, however, followed him to China in 1881 (Tr. 119), bringing with him his wife and baby boy, then about two years old (Tr. 120). The witness remained in China about ten years, seeing the boy frequently. The boy's name was Yee Chung and the witness identified the appellant as the same person that he knew as that boy (Tr. 120). The father, Yee Kim Sing, remained but a few months in China, returning to San Francisco. The witness was not allowed to testify to declarations of the father, in letters, announcing the birth of his son (Tr. 122) and this is hereafter considered under assignments of error. The witness returned to San Francisco in

1890 and saw the appellant's father, Yee Kim Sing, on his return (Tr. 123). The witness returned to China a second time in 1895, again seeing Yee Chung and identified the appellant as the same boy who had been brought from the United States as an infant (Tr. 123). The witness remained one year and eight months in China and during the time that he was there the appellant, Yee Chung, was married (Tr. 124) and before the witness left China Yee Chung's eldest son was born and the witness "partook of the feast which was set to celebrate his boy's birth". The witness was invited to the marriage feast and attended the wedding (Tr. 124). The witness made a third and last trip to China in 1907. Yee Chung had in the meantime returned to the United States but the witness saw his wife and boy in the Chow Duey village (Tr. 125). He knows that Yee Chung, after returning to the United States, lived in Pittsburg; corresponded with him several times a year. The witness was at one time a registered voter of the City and County of San Francisco (Tr. 126).

Lee Leung. Is a cigar maker and knew Yee Kim Sing, father of the appellant. The witness has lived in San Francisco for forty years (Tr. 106). Yee Kim Sing was the storekeeper at 728 Sacramento Street and the witness knew his wife, Wong Shee. They lived upstairs over the store. He knew of the birth of the baby and saw it a couple of weeks after its birth (Tr. 106) and after the celebration of the feast of the shaving, which the witness described in detail, he saw the

baby often (Tr. 107). The ceremony of the shaving is as follows:

The baby is first shaved and then the friends give the baby presents and are invited to celebrate that birth or shaving feast. The feast for the birth of Yee Chung was celebrated at Hang Far Low restaurant (n. b., a celebrated hostelry in Chinatown) and the baby was named Yee Chung. The witness knew of the departure of Yee Kim Sing, wife and baby (Yee Chung) for China when the baby was about two years old (Tr. 107). Afterwards, in 1892 (about twelve years later), the witness went to China. Yee Kim Sing, the father, had returned to San Francisco after only a few months' absence and when the witness departed for China Yee Kim Sing sent by him one hundred dollars in Mexican money to be given to Yee Chung's mother (Tr. 108). The witness visited Yee Chung and his mother and remained in China about a year, seeing them several times (Tr. 108). Yee Chung was then about fourteen or fifteen years of age (Tr. 109). Witness remembers that on China New Year in 1893 he spent the day as the guest of Yee Kim Sing's wife and boy, Yee Chung (Tr. 109). The witness positively identified the appellant in the Court room as the same Yee Chung whom he had seen grow up from babyhood and who had been taken to China by his father (Tr. 109). Likewise he saw Yee Chung on his return voyage to San Francisco (Tr. 109) and often after that. He had been told about his arrival at Quong Chung

Sing's store on Commercial Street and went over to the store to see him several times. Yee Chung visited him at his room (Tr. 110) and discussed his parents and the incidents of his life, and he met him on subsequent occasions, discussing his various trips (Tr. 112).

Wong Chung. Was born in San Francisco and is the personal cook of Commissioner of Immigration, Mr. Backus. He has been such cook continuously for twenty-five years, never having worked for any other person (Tr. 171). He first went to China in 1880 and was about thirteen years of age. He remained there about ten years. The witness knew Yee Kim Sing, the Chinese merchant, at San Francisco, before the witness left on his trip for China. He was in the general merchandise business on Sacramento Street named Qwong Wong Chung. Knows that a son was born to the wife of Yee Kim Sing before the witness departed for China, and after the witness had been in China for a year or so the father and mother came on with the baby boy, then about two years old (Tr. 172). They lived about three Chinese miles—approximately one English mile from the witness and the witness visited them several times a year. The mother of Yee Chung and the father of the witness having the same family surname. The witness returned from China to San Francisco in 1889 (Tr. 174) and when he returned Yee Chung was about ten years old. The witness had seen Yee Chung a few days after he was born and then saw him in China until he was about ten

years old. The witness again returned to China (did not see Yee Chung as he had gone to the United States). He saw Yee Chung's wife and one baby, just able to walk, and one a few days old, both being boys (Tr. 174). The witness made another trip to China in 1906, returning to the United States in 1908. On the last trip back Yee Chung was in China, having preceded Wong Chung only about two months (Tr. 175). Yee Chung followed him to America. After the return of the witness to America he saw Yee Chung many times and he positively identified the appellant as the Yee Chung, son of Yee Kim Sing.

Yee Foo. Is a merchant, member of the Hing Lung Company doing a business of about $300,000.00 a year and paying about $40,000.00 annual revenue to the United States (Tr. 184). He first came to the United States in 1872. Knew Yee Kim Sing, appellant's father, at 728 Sacramento Street. The witness went to China in 1879 and when he left for China Yee Kim Sing had no children (Tr. 184). The witness stayed in China about eight months, returning in 1880, and on his return from China found that Yee Kim Sing's wife had given birth to a boy (Tr. 185). The witness saw the child when he was a few months old and on his return stayed at Qwong Wah Chung's—where Yee Kim Sing was the bookkeeper (Tr. 185). Yee Kim Sing and the witness went into business during that year, the witness going up to Woodland, Yee Kim Sing sending him the goods to start in business with. He knows that

he departed from China about 1881, taking his wife and boy with him and returning the next year alone (Tr. 186). The witness three years later, in 1884, went to China, staying there about ten months and saw Yee Kim Sing's wife and baby boy, Yee Chung, on several occasions (Tr. 186). The witness did not go back to China again until about 1897 and remained just a year, seeing Yee Chung while there. Yee Chung's mother informed the witness that Yee Chung was going to be married. Afterwards Yee Chung was married and the witness had an invitation to the wedding and attended it in the Chung Doey village. The witness returned to China in 1901 and visited the family. (Yee Chung was not there, he having come back to the United States) (Tr. 188). The witness again made a trip in 1907, one year after the earthquake, and Yee Chung was at that time in China, he having returned to his family. The witness positively identifies the appellant as the son of Yee Kim Sing and answered as follows:

Q. That is Yee Chung?
A. Yes.
Q. Can you swear that this is the boy that grew up as the son of Yee Kim Sing?
A. Yes. (Tr. 189.)

Yee Hing Wo. Has a large drug store in San Francisco. Arrived in San Francisco in 1880, making the acquaintance of Yee Kim Sing shortly after his arrival. The witness was connected with the firm of Wong Ting Chung in Hong Kong with

which Yee Kim Sing had a connection in San Francisco. On the arrival of the witness in San Francisco he went directly to Quong Wah Chung's store at 728 Sacramento Street, being a member of the firm (Tr. 196). Yee Kim Sing was a member of the firm and part of his work was that of a bookkeeper (Tr. 197). Yee Kim Sing had, at the time of the arrival of the witness, a son about four or five months old, whom he took to China with him not long afterwards (Tr. 197). Yee Kim Sing returned alone to San Francisco and the witness—in 1883—departed for China, returning the following year. On going to China he took back with him from Yee Kim Sing to his wife, the mother of Yee Chung, certain clothes (Tr. 198). The little boy Yee Chung was then about four years old (Tr. 198). The witness again returned to China in 1889, remaining about two years, seeing Yee Chung and his mother many times. The witness again returned to China in 1898, remaining about a year, visiting the mother, but Yee Chung himself had come on to the United States. The witness identifies Yee Chung, the appellant, as the baby boy who was taken to China and whom he saw in China (Tr. 199). He has also seen him many times in the United States.

James H. Clark. A white witness in his sixty-fourth year, is a native of New York. His business is that of merchandise and insurance broker, chiefly in the Chinatown district. He has been in Chinatown since 1868 and testified that the

people say he is the oldest man in the Chinatown District. He deals chiefly in rice, oil, tea and insurance. In 1879-80 he knew Yee Kim Sing, member of the firm and bookkeeper for the Quong Wah Chong Co. He says that the number then was the *old number and was 728 Sacramento Street* (Tr. 203). He called there about five days a week and knew that Yee Kim Sing lived upstairs over the store but never went upstairs, as it was not the habit of white people to go into these private quarters. He saw the wife of Yee Kim Sing in the store and knows that there was a child born to them about 1880 or '81. He saw the baby downstairs in the arms of the woman supposed to be Yee Kim Sing's wife, but does not know whether the child was girl or boy (Tr. 203). Yee Kim Sing left San Francisco for China, to the best of the witness' recollection, about 1881, taking his wife and child Yee Kim Sing. He returned (without the wife and child) and continued doing business until he quit there, about 1896, going elsewhere. The witness knows Yee Chung, having met him the next time, as nearly as he could remember, about six years prior to the trial, he having been introduced to him as the old bookkeeper's son. This was about China New Years and the witness pointed out another Chinese in the Court room who was with Yee Chung at the time, namely Yee Hin Wo. The witness testified to the important character of the

business and size of the firms represented by the Chinese witnesses who testified at the hearing.

Yee Shun Chung. Is a member of the mercantile company of Wing Hong Shing, 816 Washington Street, which firm does a business of about $200,000 a year and pays revenue to the United States Government sometimes to the extent of $50,000 a year (Tr. 208). The witness first came to San Francisco in 1877. He knew Yee Kim Sing at 728 Sacramento Street, where he was bookkeeper and member of the firm. A male child was born to the wife of Yee Kim Sing during the first or second month of the sixth year of Kwong Sue (Tr. 209). He describes the Chinese celebration on the birth of the child, at which he was present; he went to the shaving feast. The witness remembers Yee Kim Sing going to China with his wife and boy Yee Chung, and himself followed several months after and saw Yee Kim Sing and his wife and boy in his native village in China (Tr. 209). The witness remained five or six years in China and went back to China again in 1898. Yee Chung had then gone to the United States but he saw his wife and one boy. He went back to China again in 1903 and during the several years visited the family (Tr. 210). He positively identified Yee Chung as the boy in question.

THE RECORDS OF THE UNITED STATES IMMIGRATION SERVICE, LANDING BOTH FATHER AND SONS ON FOUR DIFFERENT OCCASIONS, ARE IN EACH CASE PRIMA FACIE EVIDENCE OF THE RIGHT ON THE PART OF YEE CHUNG TO REMAIN IN THIS COUNTRY AS A NATIVE OF THE UNITED STATES.

The foregoing statement of the law is laid down by this Court in the very recent case of

> Chin Kam v. U. S., 232 Fed. 853, and cases cited therein.

The history of these landings is set forth and the various official records contained in the transcript from page 273 to 301, inclusive.

In an excess of caution we reiterate that the last landing ordered on the report of Inspector Mayer passes on every question and approves the landing on the ground that Yee Chung is the identical person named in Commissioner Johnson's judgment (Tr. 295). While Judge Bledsoe in the Court below, rendered his opinion, among other things, on the testimony of this witness Mayer that Yee Chung had not properly described the United States Commissioner (see opinion Tr. 11), notwithstanding the witness Mayer testified as follows:

> Q. By Mr. McNab. And at the time you wrote your report recommending as to the landing of these persons, including the defendant here, and his description, you had all of these things in mind, your knowledge of Mr. Johnson and what you had seen.
>
> A. Yes I did. (Tr. 164.)

It may be remarked that the witness Mayer showed no evidence whatever of a desire to injure the appellant and in the opinion of counsel gave a clear impression of his belief that his opinion was correct and that Yee Chung is a citizen of the United States; yet the Court now orders his deportation.

AN EXAMINATION OF WHAT THE DISTRICT COURT CONSIDERS AS EVIDENCE SUFFICIENT TO DEPORT THE APPELLANT.

The opinion of Judge Bledsoe is given on pages 9 and 12 of the transcript.

In view of the fact that the opinion of the Judge includes only the discrepancies urged by the United States Attorney in the Court below, we may assume that it is the strongest statement that can be made adverse to the appellant. The facts which caused the learned Judge to "Entertain a want of satisfaction" are as follows:

1. The showing of the Canadian records.

2. Alleged discrepancies and statements made by the appellant.

THE CANADIAN RECORDS.

The Government produced as a witness A. L. Jolliffe, who presented certain records of Chinese landing at Vancouver in 1879 and covering the period when Yee Chung testified he first landed

at that port. These records simply contained columns of names with certain data and one name opposite each Chinese.

The witness testified that he had only been in the Government service for a short time and knew nothing whatever concerning the manner in which the data were kept at the time they were made in 1879 and knew nothing of the methods obtained at Vancouver at that time (Tr. 142-143), and did not pretend to say whether or not there were Chinese aboard not in the record or misdescribed in the record (Tr. 149). In 1879 the Canadian Restriction Acts had not, as counsel are informed, been passed. There were on the two vessels for which records were produced 482 Chinese, 305 having come in on the first boat (Tr. 149). Of the 305 Chinese there were two answering to the name of Yee Chung, but it is claimed that neither answers to the physical description of the appellant. The Court examined the records and stated that there were a number of Chinese ranging from 16 to 18 years on the boat in question, being of the age of Yee Chung, but not of that name (Tr. 154).

All that can be claimed for this testimony is that out of nearly 500 Chinese, many of whom might have answered to the description of the appellant, none of that description had set opposite the description the name Yee Chung. It is recognized by decisions too numerous to mention and by the testimony in this case that Chinese

have several names, and furthermore, at the outset, it was not disputed between the Government and appellant's counsel that the only way of spelling Chinese names in English is by sound, the Court remarking even upon the difficulty in spelling in that way (Tr. 25). Some dispute even arose as to the proper spelling of the appellant's name in Court (Tr. 25). During the trial confusion arose through the interpreter in pronouncing the names of some of the witnesses on the stand. One witness spelled his name as "Ark", while the reporter gave it as "Dock". Furthermore, no record of signatures was kept by Chinese passing through into the United States (Tr. 151). We earnestly contend that the testimony of many witnesses as to the birth of the appellant in California, backed by the judgment of the U. S. Commissioner, should not and cannot be overthrown by the purely negative testimony that out of a list of nearly 500 Chinese, many of whom answer to the description of the appellant, the appellant's name does not appear, when as a matter of fact Chinese names and their spelling is a matter of uncertainty. The U. S. Commissioner had the opportunity when a few days later Yee Chung was brought before him to investigate this landing and presumably did so. A judgment is not to be set aside on speculation. Furthermore, the appellant testified that he was not asked to give his name when he landed at Vancouver, but was asked where he was going (Tr. 240-3). The

witness admits that he did not understand the question when asked by counsel if he had given his name and positively states that only a Chinese, evidently directing them to the proper train, asked him his destination.

Furthermore, the witness testified to what was unquestionably the practice in Hong Kong prior to the enactment of the Exclusion and Restriction Acts in the United States and Canada, namely: He bought his ticket at a Chinese store in Hong Kong where they kept tickets for sale (Tr. 240) and was never questioned on board ship as to his name. This custom of buying tickets at that time is well established by other evidence in the case. In the testimony of Yee Foo (Tr. 189 and 190), we have a very clear explanation of how these passengers were handled prior to the Exclusion Act. He states that the tickets were all bought through an agent as follows:

> "The agent, he might hold all the tickets he can get, to make a profit of them; on account of sometimes more passengers coming, everybody want to buy tickets because the steamship only allow so many on each trip; when he get hold of some sometime he make from thirty to fifty dollars higher than the steamship company get, because the steamship company never sell any tickets through their agent.
>
> Q. Do you as a passenger give your name to the steamship company?
>
> A. *No sir, they never do;* they give what they please; just like Charlie or Jones or whatever kind of name you go by, you give, and they give you a ticket—you can claim your name

> is Jones or you can claim your name is James and so on; they never give the right name. But now since the laws have been passed, when the steamship company sell the ticket he has to give the name; they are now pretty strict, the last few years; they want the people to get the return certificate and show it before they will sell the ticket. That is in the last ten years."

In view of this testimony, which the Government did not attempt to contradict, we can see no force whatever to be accorded to the purely negative showing of these Canadian records and yet this seemed to be the main reliance of the Government. The Judge in his opinion says that if any credence is to be given the testimony of the witness Jolliffe: "An investigation of all the Chinese passengers * * * was had and their names taken." It is respectfully asserted that the witness testified to no such thing; he merely states that now, according to present Canadian practice, under the Restriction Acts that practice has been followed and there is positive testimony in the record from Yee Chung that his name was not taken.

THE ALLEGED DISCREPANCIES.

It is alleged that the witness first stated that a Chinese interpreter asked his name at Vancouver and that he afterwards denied that it was asked. (Tr. 241). The testimony is on pages 241 to 243 and appellant first stated that a Chinese first asked

them where they were going. There is no statement whatever that it is the interpreter and when the Court asked him again the witness frankly stated: "I did not understand that Judge" and stated positively and repeatedly that his name was not taken and that he had not understood the question. Again it is urged that the witness had stated that he held ticket through to Boston and that he afterwards changed his statement to say that his ticket only read to Montreal. It is respectfully submitted that if the witness passed through Montreal as the last place in Canada on his way to Boston, any slight confusion on this question, which is perfectly natural, ought not to prejudice him. As a matter of fact, the witness Jolliffe on the stand spoke of certain immigrants being routed through to Mansonville, whereas he afterwards corrected this by saying that while routed to Mansonville their ticket was actually to Boston (Tr. 153). It is thirty-seven years since this witness made this trip and counsel ventures to suggest that even a white man, in a much less period, would have forgotten these details.

It is next noted by the Court that the appellant did not give a description of Commissioner Johnson which tallied with the facts. We find it difficult to express ourselves with reserve on this question. The fact that the witness did not give a proper description of the physical appearance of the U. S. Commissioner Johnson was testified to by Inspector Mayer, who knew Commissioner

Johnson. *Yet this same Commissioner Mayer* wrote the opinion landing the appellant Sept. 13th, 1909, and states *that he thinks it unreasonable* to hold him to too strict a description in view of the great lapse of time and says that he is convinced that he is the same person named in Commissioner Johnson's judgment (Tr. 295).

Furthermore, it seems beyond reason to expect a Chinese in a Court room, in a foreign country, to describe a judge when he probably did not know whether it was the Commissioner, District Attorney, or the bailiff whom he was describing.

At any rate the Government has heretofore passed on this, held it unreasonable to hold him to this proof, and has landed him. This same department now asks the judicial department to declare what one of its own officials determined was wrong, and that on the testimony of the same officer who rendered the opinion.

The only remaining point made by the Judge in the Court below is that when arrested the appellant asserted to the officer that he had some form of "native paper" in the possession of his clansmen in San Francisco. As a matter of fact the appellant did have a paper, namely, a judgment of the U. S. Commissioner discharging him on the ground that he was a native of the United States. No claim was made by the Government that this was not true nor was any attempt made to disprove the fact that he held such a judgment. It is only now claimed that he is not the person named in the judgment.

This examination was made by the inspector who had seized the appellant at a railroad station and he told the inspector that he did not have any certificate. This was true (Tr. 250). He was excited (Tr. 251) and after his examination was thrown into jail and kept there for further examination (Tr. 252-3). It is difficult to refrain from an expression of indignation against what seems to be the established custom of the Immigration Service of throwing these unfortunates into jails, examining them under stress of excitement, in the absence of counsel and friends, and then trying to deport them on the feeblest kind of alleged discrepancies which would not be even regarded in a Court of Justice as between white persons.

The Court mentions a remark of the appellant relating to a photograph presented to him by the District Attorney in an attempt to establish that it was his father. There is no inconsistency in his replies. He said first it was not his father (Tr. 116). When later shown the photo he said there was some resemblance but made it clear he was not his father (Tr. 220).

LEGAL ARGUMENT.

If appellant was born in the United States he is an American citizen and entitled to the protection of its laws.

U. S. v. Wong Ark, 169 U. S. 649.

This is a civil case and is to be determined by the preponderance of evidence. Facts positively sworn to are not to be overthrown by inference or suspicion.

Woo Jew Dip v. U. S., 192 Fed. 471 (holding evidence outweighs that of the government);

U. S. v. Leu Jin, 192 Fed. 580 (holding evidence of citizenship preponderates).

And where a resident of the country, of Chinese descent, is physically in the country resisting deportation, and not merely seeking to *enter* the country, and sets up the claim to citizenship, section three of the Exclusion Act requiring the Chinese to establish his right "by affirmative proof to the satisfaction of the Judge" has no application. "No rule of evidence can fritter away" his right.

Moy Suey v. U. S., 147 Fed. 697 (Seventh Circuit);

Chin Wah v. U. S., No. 2699, Court of Appeals, District of Columbia, decided Jan. 4, 1915, — Fed. —.

The decision of U. S. Commissioner Johnson is a conclusive adjudication as to nativity and citizenship and not now open to attack.

U. S. v. Yeung Chu Kong, 140 Fed. 748;

Leung Jun v. U. S., 171 Fed. 413.

In the following cases the District Courts have been reversed for ordering deportation. The facts

are so strikingly similar as to establish them as authority:

Pang Sho v. U. S., 154 Fed. 660 (6th Circuit);

U. S. v. Chin Lew, 187 Fed. 544 (2nd Circuit);

Woo Jew Dip v. U. S., 192 Fed. 471 (5th Circuit).

And the District Court of New York reversed on similar but much more slender evidence.

U. S. v. Leu Jin, 192 Fed. 580.

ASSIGNMENT OF ERROR NO. 9.

It was error to refuse to permit the witness Yee Ying Dock to testify as to the declarations made by the appellant's father as to the birth of Yee Chung (pages 121-2). (Excepted to; but all exceptions were also reserved by Court order, Tr. 19).

The declaration, act or omission of a member of a family who is a decedent, *or out of the jurisdiction* is admissible to prove pedigree (C. C. P. 1852).

It was established that the father was residing in China at the time of the trial.

ASSIGNMENT OF ERROR NO. 10.

It was error to admit a record purely *ex parte* for even the limited purpose of proving that a

certain person whose photo appeared departed for China. (See Assignment 10, page 309.)

The Court, notwithstanding this limited purpose, afterward permitted the appellant to be questioned concerning the resemblance of this man to his father and mentions it in his decision.

Plainly the record is an *ex parte* declaration and cannot be admitted to prove anything; yet it was used—and evidently with some success—to convince the Court that the person whose photo was attached might be the father of appellant and might have departed the jurisdiction.

Dated, San Francisco,
September 18, 1916.

Respectfully submitted,

JOHN L. MCNAB,
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Attorneys for Appellant.

No. 2799.

United States
Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

Yee Chung,
Appellant,
vs.
United States of America,
Appellee.

BRIEF FOR APPELLEE.

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No. 2799.

United States

Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

Yee Chung,
Appellant,
vs.
United States of America,
Appellee.

BRIEF FOR APPELLEE.

The appellant in this case filed on March 20, 1916, in the office of the United States District Court at Los Angeles, his assignment of errors, setting out seventeen (17) separate and distinct assignments of error [Tr. 305-318]. In writing their brief counsel for appellant ignored paragraph two, subdivision B, of rule 24 of the rules of this court in this, that they failed to set out the assignment or assignments of error to which the first 34 pages of their brief is directed. It would appear from their argument and statement of facts, and the rehearsal of testimony of the witnesses for appellant in the trial before the District Court, that counsel desired to direct the attention of the court to

their assignments of error based upon the insufficiency of the evidence to sustain the District Court in its findings and judgment, and the whole brief of appellant is taken up, with the exception of the last two pages, in dealing with the alleged insufficiency of evidence to warrant the deportation of the appellant. On pages 34 and 35 of the brief of the appellant counsel specifically direct the attention of the court to assignments of error Nos. 9 and 10. Owing to the manner in which the brief is arranged, it is rather difficult to answer the same in a logical and orderly manner. However, we will take up in the order in which the same are argued in appellant's brief, 1st, the argument on the insufficiency of evidence; second, assignment of error No. 9; third. assignment of error No. 10.

STATEMENT OF FACTS.

Yee Chung, the appellant, was arrested at the River Station in the city of Los Angeles, state of California, on July 14, 1914, at 4:00 p. m., by Immigrant Inspector W. A. Brazie. He was sitting in the station alone [Tr. 18]. Upon his arrest, appellant stated that he was born in this country and wanted to go to San Francisco [U. S. Exhibit No. 2, Tr. 269]. The next train for San Francisco after 4:00 p. m. leaving the River Station where appellant was arrested was at 7:30 p. m. [Tr. 254]. Appellant was immediately taken, upon his arrest, to the United States Immigration Office in the Federal Building, Los Angeles, and questioned concerning his right to be in the United States, and a statement taken from him, which state-

ment was introduced in evidence as United States Exhibit No. 2, and is set out at length in the Transcript on page 268 *et seq.* Appellant in this statement refused to answer the questions put to him in a frank and straightforward manner, but repeatedly said that he did not want to talk. He said he had a native paper of some kind that was kept in San Francisco, but he did not know who had it; that he was born in San Francisco and that he got his native paper in San Francisco; that he had made a trip to China but did not know when he returned, and he further stated that he had not shown this native paper to anyone when he landed from his trip to China. He was asked the question:

Q. Have you any papers to produce showing your right to remain in the United States? A. No.

He further stated in this statement that he was a laundryman. Thereafter appellant was arrested upon a warrant set out in Transcript on pages 4 and 5 and given a hearing before the United States Commissioner, which resulted in an order of deportation being entered against him.

A very large part of the somewhat lengthy transcript is taken up with arguments by counsel on the respective sides over the admission of evidence, a great deal of which the court in an effort to expedite the trial admitted, although the court repeatedly stated that it was of no value and would not be considered in arriving at a conclusion in the case. It was stipulated by the United States attorney that appellant had several times been re-admitted to the United States by

officers in the Immigration Department, but, as was said by the trial judge [Tr. 94], "Much of this matter that has come in today appears to me to be incompetent, but no objection was made by the Government. Whether this man has passed through the barriers 3 or 4 or 5 or 6 times is immaterial. The question is, is he a native born citizen. What somebody else may have done or thought or said is immaterial at this time." It is true that appellant was successful in several times passing through the "barriers," as the trial judge called the examinations by the inspectors, but it is also true that when appellant applied for a pre-investigation of his status before making a trip to China in 1914 he was denied a return certificate, and such denial was upheld by the Secretary of Labor [Tr. 91 to 100]. This refusal of a return certificate by the Department will hereafter be referred to, not as of itself showing whether or not the appellant was born in the United States, but only as touching his veracity.

There are two separate and distinct issues involved in this case: 1st, appellant tried to establish that he was the identical Yee Chung discharged by Commissioner George E. Johnson at Burlington, Vermont, on the 28th day of December, 1897, as set out in the proceedings introduced in evidence as United States Exhibit No. 2 [Transcript 257]; 2nd, appellant endeavored to establish his nativity by witnesses independent of the claim that he had originally been discharged by the Commissioner at Burlington, Vermont, as a native.

ARGUMENT.

I.

Sufficiency of the Evidence.

Under this head we will first take up the sufficiency of the evidence from the point of view that the Yee Chung who is the appellant in this case is not the Yee Chung who was discharged by the Commissioner at Burlington, Vermont. When the appellant was arrested at River Station in Los Angeles he claimed to be a native of the United States, born in San Francisco, and to have what he called a native paper. When asked where he got the native paper he stated that he got it in San Francisco [U. S. Exhibit No. 2, Tr. 270]. In the trial of this case, before the Commissioner and before the District Court, the appellant introduced what is now called Defendant's Exhibit No. 3, set out in the Transcript on page 280 *et seq.*, which exhibit includes a certified copy of the order of discharge made by the Commissioner at Burlington, Vermont, discharging a Yee Chung from custody, and which exhibit also contained a picture of the appellant, but the appellant himself testified that the picture which is attached to this exhibit was placed upon it at Carnegie, Pennsylvania, by the Presbyterian preacher at that place, and not by the Commissioner at the time he certified to the copy of the record, and appellant was not before the Commissioner at the time he so certified [Tr. 32, 33 and 45], and there was no picture attached to the Commissioner's docket [Tr. 298]. In this connection we desire to call the court's attention

to United States Exhibit No. 2, Transcript 257 *et seq.*, and defendant's Exhibit No. 3, Transcript 280 *et seq.* From a reading of these it will appear that the Commissioner at Burlington, Vermont, did not state what the ground of discharge was upon which he discharged a Chinaman by the name of Yee Chung on the 28th day of December, 1897, nor can it be ascertained from any of the evidence or exhibits filed in this case upon what ground he discharged a Yee Chung. On page 260 *et seq.* of the transcript appears a transcript of the Commissioner's docket in the said case, but it fails to disclose the ground upon which Yee Chung was discharged, and it appears that no picture is attached to the docket in this case. Therefore, it would appear to counsel for appellee that had appellant been able to show that he was the same Yee Chung who was discharged by the Commissioner in Vermont, which he absolutely failed to do, he would not be entitled to his discharge at this time upon that ground, for it might be that the Yee Chung discharged by Commissioner Johnson was discharged on a motion of the United States attorney or someone representing his office, and not on a judgment rendered on the evidence submitted, and inasmuch as the record of the Commissioner at Burlington, Vermont, failed to disclose upon what ground the defendant was released, we fail to comprehend how counsel arrive at their positive statement that the Yee Chung who was discharged by the Commissioner at Burlington was discharged as a native of the United States. There is as much gound to assert that he was discharged as a merchant

or as a laborer with a proper return certificate as there is that he was discharged as a native, and, therefore, we repeat that in the absence of any knowledge whatsoever as to the ground of said discharge, had this appellant been able to establish his identity with the Yee Chung discharged by the Commissioner at Burlington, still that would not act as an estoppel of the action before the Commissioner and District Court at Los Angeles to determine the present right of this appellant to be and remain in the United States, and such being the case we do not believe that this court will feel called upon to pass upon the point as to whether a discharge by a United States Commissioner on the ground of nativity is a bar to subsequent proceedings against the same defendant in a separate jurisdiction.

However, granting, for the purpose of argument, that the Vermont Yee Chung was discharged as a native, we will now consider the evidence which appellant introduced to establish his identity with the said Yee Chung so discharged in Vermont. Defendant produces the record [defendant's Exhibit No. 3, Tr. 280], with his own statement that he is the identical Yee Chung mentioned in the discharge, and no further testimony is offered by him in support of that position. Appellant stated that he arrived at Vancouver, B. C., about December, 1897, on the steamer Empress of Japan [Tr. 52], and went from there to Montreal and from Montreal to Burlington, where he was arrested, consuming in all six weeks on his trip. In the examination of this appellant before the United States

Commissioner he stated [Tr. 245] that after landing from the "Emperor of Japan" that he then took the rail direct to Burlington, Vermont, which shows a wide discrepancy in the description of the trip as given by the appellant upon the two different occasions. The United States called as a witness one Arthur Leigh Jolliffe [Tr. 136 *et seq.*], who was an Immigration Agent and Controller of Chinese Immigration in British Columbia. This witness produced the manifests of the ship Empress of Japan, showing that the said ship Empress of Japan arrived in Vancouver, B. C., October 20, 1897, and not again until January 12, 1898. It is a peculiar thing that appellant remembers all of the other dates connected with his alleged nativity so vividly and yet he cannot tell the date upon which he arrived nor can he give the date when he alleged he was arrested and tried before Commissioner Johnson of Vermont. He stated that he thought it was in December, 1897, when he landed at Vancouver, but there was no ship Empress of Japan arriving at Vancouver in December, 1897. The Yee Chung who was arrested in Burlington, Vermont, was arrested upon January 3, 1898, and, therefore, it would have been impossible for him to have arrived upon the steamer landing at Vancouver January 12, 1898. Mr. Jolliffe produced the manifest of both of these trips and at no place in the manifests was there a Yee Chung answering to the description of the appellant in this case. Appellant was at that time 18 years of age. The two Yee Chungs who landed upon the Empress of Japan on October 20, 1897, were respectively 33 and

38 years of age, and the physical description of neither fits this appellant [Tr. 139-141], and one of these Yee Chungs was routed to Mansonville. Mansonville is a city in Canada very close to the Vermont line. This Yee Chung, who was routed to Mansonville was a merchant, as shown by the manifest, and in all probability he is the Yee Chung who was examined by the Commissioner at Burlington and released as a merchant. The appellant introduced testimony by the witness Yee Foo [Tr. 190] to show that since the passing of the immigration laws, Chinamen booked for America must give their names to the steamship company. It will be remembered that the arrest of this appellant was a number of years subsequent to the passing of the Chinese Exclusion Laws and therefore since the appellant introduced such testimony by his own witness, it is a reasonable presumption that had he been on the ship which he stated he arrived on his name and description would have appeared on the manifest according to the custom described by his witness. The court undertook to discover from the appellant [Tr. 239 to 243] whether or not his name was given at the time he alleges he arrived or took passage on the Empress of Japan, and at first the appellant declared that he gave his right name as Yee Chung and later denied that he was asked his name. This is a fair sample of the testimony of this appellant throughout his trial. At one time he makes one statement and at another time he makes a totally different statement. Upon the very point as to whether he is the same Yee Chung discharged by the Commissioner

at Vermont, we have already called the court's attention to the fact that there is a wide discrepancy in his description of the trip from Vancouver to Vermont as given by him before the United States Commissioner and before the District Court. Affirmative testimony was introduced to show that the testimony was false relative to his arrival on the Empress of Japan and appellant gave other testimony of a conclusive nature that he is not the Yee Chung who appeared before the Vermont Commissioner in that he was unable to correctly describe the Commissioner. His description of the Commissioner appears in Transcript, page 74, and on page 76 he admitted that he had described the man as a big man before the Commissioner in his examination in Los Angeles. Inspector Mayer described the Commissioner, having had a long and personal acquaintance with him, on page 157 *et seq.*, and the court will readily see that the two descriptions are widely different. Counsel for appellant state in their brief, page 30, that this discrepancy was due to the lapse of 37 years from the time appellant saw the Commissioner until he was arrested in Los Angeles, but as a matter of fact it was only about 16 years from the time he alleges he was discharged in Vermont until his arrest in Los Angeles. Counsel for appellant seems to make a great effort to convince the court that Inspector Mayer's testimony is not to be relied upon because he had before accepted the same description that Yee Chung, the appellant, gave of Commissioner Johnson, and passed upon it at the time his two sons were admitted and upon the return of Yee Chung, the appel-

lant, to the United States in 1909, but a reading of the transcript will readily disclose that Mayer at those times was impressed with the difference in the description given by Yee Chung of Commissioner Johnson and Commissioner Johnson as he knew him, but there being no other facts presented to Mayer at the time he passed the appellant Yee Chung and his sons through the Immigration Department at San Francisco he did not rely too strongly upon the discrepancy in the description of Commissioner Johnson, but in the light of the facts as developed in this case the discrepancy in the description assumes an important place in a chain of circumstances all tending to show that the appellant is not the Yee Chung discharged by the Commissioner in Vermont. Appellant even is unable to state the length of time he remained in jail in Vermont as the same upon two different occasions. In transcript, page 72, he states that he was shut up for several days; transcript, pages 245 and 246, he states that after he was arrested and charged, his father arrived the next day and bailed him out. On page 67 of the transcript he said he bought a ticket from Hong Kong to Montreal and that his father sent him a ticket from Montreal to Boston, and that he had to remain in Montreal for a period of five or six days waiting for the ticket to come from his father in Boston. On pages 245 and 246 of the transcript he stated that he took the train direct from Vancouver to Burlington. The veracity of the appellant is further questioned when he was shown a picture set out in U. S. Exhibit No. 1, page 261 *et seq.* In the hearing before the Commissioner at Los Angeles he denied that the pic-

ture had any resemblance whatever to his father. When shown the same picture in the hearing before the District Court he stated that the picture did resemble his father. [Tr. 79 and 80.] This hesitancy of the defendant to testify absolutely as to whether or not the picture is that of his father is only another one of those circumstances pointing to fraud in that if he did positively identify a man as his father he would thereafter be tied up to that statement, but by quibbling about it no definite statement can be laid at his door and impeachment is not possible. It appears to us that a man either knows or does not know whether a picture is that of his father, and the quibbling of the defendant about this matter simply aggravated the suspicion that he was not telling the truth and dare not commit himself to any sworn statement.

II.

We now come to the consideration of counsel's argument that appellant abundantly proved his nativity separate and apart from his claim that he was the Yee Chung discharged by the Commissioner in Vermont. In approaching this argument it will be well to remember that the conduct of appellant, his testimony, and the contradictions in his testimony and the affirmative proof of the Government that he was not the Yee Chung discharged by the Commissioner in Vermont, would engender in the mind of any impartial man the suspicion that the appellant, in the common vernacular of the street, had attempted to put something over and had failed, and having failed absolutely and positively to make good his claim that he was the Yee

Chung discharged by the Commissioner in Vermont, his testimony and that of his witnesses thereafter was by the District Court and Commissioner at Los Angeles, and of a right should be, viewed with the most extreme caution and suspicion. His mere claim to nativity in no wise shifted the burden of proof from the appellant to the Government (186 U. S. 200, 227 Fed. 131, 227 Fed. 209). Now the Chinese Exclusion Law provides that in the trial of a Chinaman alleged to be unlawfully in the United States, the burden of proof is upon him to show his right to be in the United States, and he shall be adjudged to be unlawfully within the United States unless he shall establish by affirmative proof to the satisfaction of the justice, judge or commissioner before whom he is being tried, his legal right to remain in the United States. (Sec. 3 of the Act of May 5, 1892). The learned trial judge in a case decided by him in January, 1915, entitled "The United States of America v Gee Jan, No. 858 Crim., in the Southern Division of the Southern District of California," had occasion to discuss at some length the credibility to be given Chinese testimony in a deportation case and the meaning of the term in the Chinese Exclusion Law "to the satisfaction of the justice, judge or commissioner":

> "The Court: In a case of this character the statute requires that the defendant shall produce such evidence as will establish, by proof satisfactory to the court, the right of such defendant to remain in this country.
>
> " 'Satisfactory evidence,' as defined by the California Code, as I remember it now, is that evidence which produces conviction in the mind of

an unprejudiced person inquiring for the truth—or something to that effect. It does not approximate, I should say, the proof required in a criminal case, because the presumption that a defendant is free from guilt is the strongest presumption known to the law; no such presumption as that could arise in one of these cases, and consequently no such evidence as that required to overcome the presumption of innocence should be required here. But upon the whole evidence the court must be satisfied that the right of an alien to remain in this country has been established by affirmative evidence introduced in his behalf.

"On the other hand, for the court to be so satisfied it will not be sufficient, in my judgment, merely that a preponderance of the evidence has been introduced by the defendant; that would not make it measure up to the standard required by the statute. A civil case must be decided as between the contending parties purely and simply upon the preponderance of evidence, simply because a case has to be decided one way or the other, and if the plaintiff, in ordinary cases at least, does not make out his case by a preponderance of the evidence, the other side is entitled to the decision; the court awards a judgment upon the basis of whether or not the prepondance of the evidence has been adduced by the one holding the affirmative of the issue. To hold that the alleged alien may merely present a preponderance of the evidence to the effect that he is entitled to remain would seem to me to leave out of consideration, to a great extent at least, the requirement of the statute that the court shall be 'satisfied', because much more than a preponderance of the evidence might be required to

satisfy the court of the truth or falsity of a given claim or contention. I think the true path rather lies between the two referred to, and the court ought to be able to say that it has been established to it's satisfaction, that is, to such an extent that the court believes from a fair consideration of the whole matter that the contention as made by the defense has been established—that conviction has been produced in its mind: and unless a different construction is announced by some tribunal that this court is bound to follow, that will be the construction placed by this court upon the face of the statute—and I expect to have a good many of these cases before I get through.

"In this connection I am perfectly free to admit that with me there is always a good deal of dubiousness about the testimony of Chinamen in any case. Experience has shown that many of them have little if any regard for an oath administered to them in a court of justice in our country; and experience has shown that Chinese, in their relations among themselves and for the purpose of protecting one another in various ways and exigencies, think it is not at all beyond their province to color, if not actually to manufacture, their testimony in that a given end may be accomplished thereby, and the mere fact that a Chinaman testifies to a thing does not, in my mind, because of my experience in such matters, prove to me that the fact is as testified to. It needs to be measured with the probabilities and improbabilities: it needs to be considered in relation to the interest of the Chinaman thus to testify and the reasons why it might be to his interest to testify one way as opposed to another—all of

the time taking into consideration the fact, which I believe to exist, as it is commonly known and understood among those whose duty it is to administer and construe the laws and who have to do with courts of justice, that the Chinese, as a race, when called upon in a matter in which Chinese are vitally interested, are disposed to be very free in their statements upon the witness stand.

"Furthermore, I am frank to say that I am not particularly in sympathy with this deportation act so far as my individual judgment is concerned. I think the Chinese are one of the best classes of people among the foreigners we have here, and I have very little sympathy with the law enacted here to drive them out of the country, unless it should appear that they were coming into the country in such numbers as to become a menace to our peace of mind and happiness and to interfere with the ability of the proper citizens and residents of this country to work out their own destiny unaided by aliens. The Chinese, so far as my experience has gone, are good laborers, and they do mind their own business, and ordinarily they fill a very proper niche in our social and political economy, and I have no particular sympathy at all with the law which seeks to drive Chinamen away who are unoffensive and mind their own business and who are performing their daily tasks in their own way; so that I know that I am not possessed or afflicted with any prejudice in respect to the Chinese as a race.

"Now, in this case the court will, in furtherance of what it conceives to be its duty, affirm the judgment of deportation, and will do so in any case unless the alleged alien has, by evidence introduced on his own behalf, satisfied the court that he has a right to remain here.

"This court is not going to rest its judgment upon any preponderance of evidence, or anything of that sort; neither is it going to say that the defendant must prove his case beyond a reasonable doubt; but he must satisfy the court that his contention is a righteous one, and in order to do so the court will require that he shall make a case by the affirmative testimony of competent witnesses who are believable by the court—and the court will always presume that every witness will tell the truth. The evidence of such witnesses must be free from colorable doubt or suspicion and free from the charge that it is perjured or counterfeited or made up for the particular occasion; and in this case or any other case if there be in the evidence circumstances that are of a vitally suspicious nature, or statements, of whatsoever sort or character, of such improbability as will lead the court to believe that the case has been made up, rather than a presentation of the facts as they actually exist, the court will feel that satisfactory proof has not been made and that the order of deportation should be affirmed. In every instance I want it clearly understood that if the record as presented shows the existence of those things that cause a reasonable man to doubt the truth of the contention sought to be established, this court will adjudge that the burden cast upon the defendant has not been met."

We believe that counsel for appellant have relied too much on their statement of facts, and the testimony of witnesses who, as Justice Field in the Chinese Exclusion case (130 U. S., 581-598), says entertain "loose notions of the obligation of an oath." We therefore respectfully suggest and expect that

this court will examine the testimony of the witnesses for the appellant in the same calm judicial manner in which the trial judge listened to their testimony and weigh it in the same manner and under the same rules which the learned trial judge applied to their testimony.

It is well to suggest at this point a theory which was advanced before the trial judge in the argument at the close of the evidence as to the reason why this appellant was taken into custody and why he desired a judicial expression of his nativity. The court's attention has heretofore been called to the fact that in March, 1914, at San Francisco, California, this appellant made an application to the Immigration Bureau for what is called a "pre-investigation." In other words, he submitted proof to the immigration officials at San Francisco to establish his nativity, and thus secure what is called in the Chinese Exclusion Law a return certificate entitling him to readmission to the United States after a visit to China. He was refused such a return certificate upon the evidence which he submitted and such refusal was upheld by the Secretary of Labor; therefore this appellant was unable to make the contemplated visit to China with a guaranty that he would be readmitted into the United States. Some time later, to-wit, on the 14th day of July, 1914, this appellant was discovered in the River Station in the city of Los Angeles at 4 o'clock in the afternoon, where he said that he was waiting for a train to take him to San Francisco, although the next train did not leave River Station until 7:30 p. m. for San Francisco. It is believed that the inference is very

clear that this man planted himself at River Station in Los Angeles and had a confederate notify the immigration officials so that he would be arrested and he would have an opportunity to judicially establish his nativity if possible.

We wish further to call the court's attention to the allegations made by this defendant as to his nativity. In any other class of cases such allegations would be of the most extraordinary kind and would test the credulity of the most open-minded man. How much more, therefore, would such allegations test the credulity of the court when made by a Chinese who, as Justice Fields has so well expressed it, "entertains such loose notions of the obligations of an oath." This appellant declares that he was born in San Francisco about 1880 or 1881, and at the tender age of two years was taken to China by his father, who was a merchant in the United States, and left there, and his father thereupon returned to the United States, and father and son did not meet again until sixteen years after. At the time of the hearing before the Commissioner here the father and mother are conveniently located in China, where they cannot appear to testify in favor of appellant, nor can they be produced on behalf of the Government. The great weight and importance that Chinese place upon raising their children in America and having them enjoy the benefits of citizenship in the United States and of the wider commercial activities in the United States is so notorious that the bare suggestion that a Chinese merchant residing in the United States almost continuously since 1877 up to the time at which this appellant reached

his majority should make a trip to China for no other expressed purpose than to take his young son, two years old, and his wife there and leave them there, is such an extraordinary allegation as to immediately raise in the mind of any person a suspicion that such a circumstance could not have taken place. This court is so familiar with Chinese deportation cases that it will readily recognize this case as one of a large number in which an alien alleges birth in this country but is removed at a very early age to China, where he attains his majority, and then seeks to re-enter the United States as a native. The court will also recognize the oft-used subterfuge that the father and mother of appellant are in China at the present time and so are unable to appear and give testimony in behalf of the alleged son. The court will also bear in mind that, inasmuch as Chinese witnesses invariably testify through an interpreter and testify to a statement of facts which the Government is powerless to disprove by affirmative testimony other than that introduced in their own statements, and previous statements of the witnesses, and the like, therefore such Chinese witnesses are immune to any prosecution on the grounds of perjury, and so the fear of prosecution for perjury does not enter into the question of a Chinese giving testimony in behalf of his countrymen.

Counsel for appellant argues that this case is one in which the most serious consequences will result if this appellant is not declared to be a native, but we do not believe that this court will be influenced by the result that may attach to the judgment. We

are interested in one question only, and that is whether or not this man has established his nativity, and be the consequences what they may, we believe that the court will not take this into consideration; and, as far as that is concerned, the consequences to the Government are as grave as they are to the alien, as a recognition of his citizenship would mean that he could bring his entire family into the United States and thus avoid the purpose of the Chinese exclusion laws to prohibit laborers from entering the United States.

We will now call the court's attention to the character of the witnesses which the appellant produced on his own behalf. Counsel for appellant argued that these men are men of tremendous financial ability and they pay to the United States Government thousands of dollars yearly in revenue, but we do not see that this gets to the gist of the matter, and believe that this court will only be influenced by those matters which bear upon the case and not by all of the extra judicial statements of the counsel or the witnesses. Counsel for the appellant called six Chinese as witnesses to prove the nativity of the appellant. By name they are Yee Ying Dock, Lee Leung, Wong Chung, Yee Foo, Yee Hing Woo, and Yee Shun Chung. It will be seen that four of these witnesses are Yee men, or men belonging to the same clan as appellant; that one is a Wong man, and he testified that [Tr. 173] appellant's mother and he belong to the same clan, so that leaves but one witness, Lee Leung, who is not a relative of this appellant.

In March, 1914, when this appellant applied for a

preinvestigation, he testified [Tr. 229] that he had no witnesses who could testify as to his nativity, and he was at San Francisco where all seven of the witnesses now produced reside, every one of whom testified that he had seen the appellant repeatedly there and up to very recently, and knew him to be the Yee Chung who was a native of San Francisco and a son of Yee Kim Sing. Now, if this be the case and these witnesses are telling the truth, how does it happen that Yee Chung at a time when he was not under restraint, and at a time when he was living in San Francisco, where all seven of these men reside, could not produce them at the Immigration Office to testify in this preinvestigation hearing and yet could produce them in Los Angeles at a later date in the same year? Also when he was examined before the immigation officials in Los Angeles after his arrest, he did not give the names of any of these witnesses who could testify as to his nativity [Tr. 268 *et seq.*]. Truth is the most spontaneous thing in the world and the easiest thing in the world to tell. Now, if this defendant knew of these witnesses, and they knew him, why would he not say so on these two occasions? Having denied that he had any witnesses, it must be taken for a fact that he did not know these witnesses at that time, and that these witnesses were procured to so testify subsequent to the preinvestigation hearing and the arrest and hearing in Los Angeles. Thus the defendant added one more suspicious circumstance to the long chain of suspicious circumstances surrounding his claim of nativity, and his claim that he is the same Yee Chung who was discharged by the Commissioner

in Vermont. Therefore the appellant having shown himself to be utterly unreliable and having uttered numerous contradictory and false statements, there is certainly no great weight to be given to the testimony of witnesses whom he subsequently procured to testify in his behalf. Surely such testimony cannot be said to be free from suspicion, and not being free from suspicion cannot produce that satisfaction in the mind of the court which is required by the Chinese Exclusion Law. The trial judge in his conscientious manner applied to the defendant's witnesses all of the tests prescribed by law, and was able, in addition to what this court can do, to judge from their personal appearance and their actions upon the witness stand as to whether they were telling the truth, and we do not believe that this court will now undertake to negative the findings of the lower court on a question of fact, where the trial judge was in a much better position to judge the veracity of the witnesses than this court can possibly be.

Counsel for appellant bases a long argument upon the fact that Wong Chung, one of the witnesses for appellant, was a servant in the household of Commissioner Backus in San Francisco, but we do not see that this adds anything to the weight of his testimony and was simply an attempt on the part of counsel to influence the lower court in attaching undue importance to the testimony of Wong Chung by reason of his services in the household of Commissioner Backus. Likewise great stress is placed upon the testimony of one James H. Clark, a witness for appellant, but the most that can be said for his testimony is

that he saw a woman in a store where Yee Kim Sing, the alleged father of Yee Chung, worked, and supposed that she was the wife of Yee Kim Sing. Now, this case is not to be decided upon supposition and such testimony as this. Clark further testified that he has been a witness for numerous Chinese in cases before the Department of Immigration, and that his entire living is made in Chinatown and derived from Chinese. Therefore, it is easy to see that this man would not be above suspicion, and even were he above suspicion, his testimony does not prove, or even tend to prove, the nativity of this appellant, as the lapse of some thirty odd years between the birth of this appellant and his next seeing him is such a lapse of time as would tax the credulity of the most credulous in believing that he could identify this appellant or in any wise connect him with a child born in 1880 to the wife of Yee Kim Sing in San Francisco, if such child were actually born.

Assignment of Error No. 9.

We presume that the counsel for appellant does not rely very strongly upon this assignment of error, as the only law he quotes is a section of the Civil Code of Procedure of the State of California, which is hardly applicable in the present circumstance. The testimony [Tr. 121 and 122] shows that counsel for appellant was endeavoring to introduce into the record the contents of letters not addressed to the witness, it not being shown that the letters were not in existence at the time of the trial, and there being no proof as to the identity of the writer of these letters,

and such evidence was clearly hearsay and incompetent and illegal and immaterial, and the trial court was correct in his refusal to admit into the record this hearsay evidence.

ASSIGNMENT OF ERROR NO. 10.

This assignment has to do with the admission of a photograph into the record. It is not to be believed that the learned trial judge would in any manner be influenced in his decision by any matter which was attached to the photograph, but which was not admitted in evidence even though the court in examining the records should read the extraneous matter attached to the photograph, and the photograph was clearly a competent piece of evidence as tending to discredit the testimony of Yee Chung, and to show the difficulty of getting this appellant to commit himself to any definite statement in any phase of the proceedings. And we do not believe that the photograph itself is an *ex parte* declaration as alleged by counsel. The statements attached to the photograph were certainly *ex parte* and were not considered by the court, but the photograph itself was a competent piece of evidence, and that was all that was considered by the court. The fact that attached to the photograph and admitted in evidence were reports showing that this man whose photograph was introduced left the United States would have no important bearing on the case, as the Government was unable under the rulings of the court to introduce further testimony to make it of value, but that much of it was certainly a competent

record and admissible under proper certification under section 882 of the Revised Statutes of the United States.

Legal Argument.

We are not going to take issue with counsel in their statement that if appellant was born in the United States and is an American citizen, he is entitled to the protection of its laws. This is such a self evident fact it needs no argument in its behalf, but there is a wide difference between a man being a citizen of the United States and in claiming that he is a citizen; and a Chinese found laboring in the United States without a proper certificate must establish his right to be here to the satisfaction of the court by affiramtive proof, even though he does claim that he is a citizen of the United States. See Chin Bak Kan v. United States, 186 U. S. 193, where the court says on page 200 as follows:

> "By the last the Chinese person must be adjudged unlawfully within the United States unless he 'shall establish by affirmative proof, to the satisfaction of such justice, judge or commissioner, his lawful right to remain in the United States.' As applied to aliens there is no question of the validity of that provision, and the treaty, the legislation, and the circumstances considered, compliance with its requirements cannot be avoided by the mere assertion of citizenship. The facts on which such a claim is rested must be made to appear. And the inestimable heritage of citizenship is not to be conceded to those who seek to

avail themselves of it under pressure of a particular exigency, without being able to show that it was ever possessed."

Also see *ex parte* Chin Him, 227 Fed. 131, and Hoey Ay Sing v. U. S. 227 Fed. 209, in which this question is discussed and in which the court in its opinion states:

"McPherson, Circuit Judge. In the first instance the proceeding in this case was before a United States commissioner under the Chinese Exclusion Acts. The commissioner ordered the appellant to be deported, and on appeal the District Court affirmed the order. Each tribunal heard and saw the witnesses, and their concurring judgment should not lightly be disturbed. The act of Congress puts the burden on the Chinese person of proving his right to be in the country—in this case, his citizenship—and after carefully reading all the evidence we see no reason to disagree with the conclusion of the commissioner and the court below that the appellant's birth in this country has not been established. United States v. Hom Lin (C. C. A. 2d Cir.), 223 Fed. 520; Fong Ping Ngar v. United States (C. C. A. 2d Cir.), 223 Fed. 523."

In the two cases cited above, United States v. Hom Lim, 223 Fed. 520; Fong Ping Ngar, 223 Fed. 523, the Circuit Court of Appeals in the Second Circuit holds that the courts below, having much better opportunity of hearing and examining witnesses, their judgment as to the weight to be given to the testimony of each witness will not be overturned on appeal.

In conclusion we would urge that the court consider with great care the memorandum opinion of the district judge set out on page 9, *et seq.*, of the transcript. As has heretofore been mentioned, both the commissioner and the trial judge had an opportunity to examine the witnesses in person, and they were therefore in much better position to judge as to their veracity than can one who has not seen them in person. The Supreme Court, in the case of Quock Sing v. United States, 140 U. S. 417, said that "the uncontradicted evidence of interested witnesses as to improbable facts does not require judgment to be rendered accordingly," and this point of view was adopted in the case of Yee Sing Far v. United States, 231 Fed. 948, in which the court said:

> "Appellant's claim to remain in this country is based upon his own testimony and that of Mary J. Matthews and two Chinese persons. The testimony introduced was insufficient to satisfy the commissioner and the district judge that the appellant was entitled to remain in this country. We think we would not be justified in overruling their judgment.
>
> "The question was one of fact and even if we might have reached a different conclusion if we had heard the testimony in the first instance, the assumption furnishes no reason for a reversal. We cannot say that the finding of the commissioner and the district judge is so contrary to the evidence as to justify us in setting it aside."

This is a case wherein counsel for appellant base their hope of a reversal upon the evidence and the evidence alone, and we do not believe that this court will reverse the District Court and the commissioner upon a case so fraught with impossibilities, improbabilities and contradictions as is this one, upon a question of fact.

Respectfully submitted.

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Attorneys for Appellee.

No. 2799

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

YEE CHUNG,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPELLANT'S REPLY BRIEF.

JOHN L. MCNAB,
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Filed this.....day of November, 1916.

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YEE CHUNG,
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UNITED STATES OF AMERICA,
Appellee.

APPELLANT'S REPLY BRIEF.

The Judge of the Court below, in his memorandum of opinion (Tr. 10) said:

> "I had occasion in an oral opinion delivered in this Court late in January of last year, in the case of United States v. Jee Jan, to indicate my views as to the amount of evidence that ought to be produced in behalf of a person of Chinese descent, in one of these deportation cases, in order that the requirement of the statute that the Court should be satisfied, might be had."

Counsel for appellant were unable to find any record of such decision until it appeared in the brief of the appellee herein. That decision by the learned Judge of the Court below is set forth at length on pages 15 to 19 of the Government's Brief.

In the opinion of counsel for the appellant the language of that decision should not meet the approval of this Court. It indicates the barrier of judicial bias which the appellant in this case was required to scale, in order to remain within the boundary of this Country. With the utmost respect to the learned Judge of the Court below we feel that the language of his opinion goes far beyond anything ever countenanced by the Courts of this Country in disparagement of the testimony of a given race. We quote from the opinion:

> "In this connection I am perfectly free to admit that with me there is always a good deal of dubiousness about the testimony of *Chinamen in any case* * * * and the mere fact that a Chinaman testifies to a thing does not in my mind, because of my experience in such matters, prove to me that the fact is as testified to."

And setting forth the rule which governs him in weighing any Chinese case it is said:

> "All the time taking into consideration the fact which I believe to exist, as is commonly known and understood among those whose duty it is to administer and construe the laws and who have to do with Courts of Justice, *that the Chinese as a race*, when called upon in a matter in which Chinese are vitally interested, are disposed to be very free in their statements upon the witness stand."

The foregoing quotations amount to nothing less than this: That any Chinese resisting deportation must establish his case by witnesses other than Chinese. No matter with what candor or degree of

particularity the Chinese witnesses may testify, the adoption of a rule thus stringent would be equivalent to determining in every case in advance that a Chinese sought to be deported could not expect to prevail unless he could overthrow the burden imposed by statute by the testimony of reputable witnesses other than those of Chinese birth.

A Chinaman associates normally with people of his own race. It is with difficulty that he could call white witnesses in any case. If a Caucasian were arrested in the Chinese Republic and on resistance to deportation proceedings were to be told that he could not expect to prevail unless by the testimony of Chinese and were to be further told that the evidence of his own countrymen would be denounced in advance as unworthy of belief, he would probably find grave difficulty in resisting expulsion from the Country.

We respectfully urge upon this Court that the comprehensive language of the Judge of the Court below requires modification. That opinion denounces the testimony of the Chinese *as a race*. In one sweeping sentence it relegates to the limbo of perjury the testimony of a class composed of the inhabitants of a nation.

That such is not the true rule we entertain no doubt. That the testimony of a Chinese is to be weighed in the balance with the probabilities attending it and is to be accepted or rejected by its own

inherent weight when measured by the probabilities of the particular case is the law.

> "A Court is not at liberty, arbitrarily and without reason to reject or discredit the testimony of a witness upon the ground that he is a Chinaman, an Indian, a Negro or a White man. All people, without regard to race, color, creed or country, whether rich or poor, stand equal before the law. It is the duty of the Courts to exercise their best judgment, not their will, whim or caprice, in passing upon the credibility of every witness."

Woey Ho v. United States, 109 Fed. p. 890.

In this case, seven witnesses, unshaken by cross-examination, testified in the most positive manner and with minute detail of circumstances, the birth and life of the appellant.

If the testimony in this case was measured by the rule laid down in advance by the learned Judge of the Court below, that testimony might as well not have been introduced.

The only other matter contained in the brief of the Government calling for comment is the following remarkable statement:

> "It is believed that the inference is very clear that this man planted himself at River Station in Los Angeles and had a confederate notify the immigration officials so that he would be arrested and he would have an opportunity to judicially establish his nativity if possible."

This is a remarkable tribute to the strength of appellant's cause.

But to anyone at all familiar with the terror which enters Chinese hearts at thought of arrest, this statement of the United States attorney is incredible.

Dated, San Francisco,
November 15, 1916.

Respectfully submitted,

JOHN L. MCNAB,
ISADORE B. DOCKWEILER,
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No. 2799.

United States
Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

Yee Chung,
Appellant,
vs.
United States of America,
Appellee.

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JUN 23 1917
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PETITION FOR REHEARING.

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United States

Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

Yee Chung,
Appellant,
vs.
United States of America,
Appellee.

PETITION FOR REHEARING.

Comes now the appellee in the above-entitled case and petitions this Honorable Court for a rehearing in the above-entitled matter, and, in support of said petition, shows to the court the following matters:

ARGUMENT.

In deciding this case, the lower court came to the conclusion that:

> "The whole question in the case, however, centers about a determination of the claim of the defendant that he is the individual named Yee Chung, who was adjudged to be rightfully in the United States by a commissioner of the United

States District Court of the District of Vermont, in the month of January, 1898, and this issue is the determinative one, because if it can be believed from the evidence that he is the individual mentioned in that proceeding, then it is impossible to discredit his claim that he is the son of Yee Kin Sing.

"If, however, his asserted claim of having been adjudged rightfully in the United States, in Vermont, as above referred to, be without foundation in the mind of the court, then his claim of being native-born falls to the ground, because the claimant has been completely discredited as a witness, and the order of deportation should be affirmed."

This was the way in which the attorneys for the Government viewed the matter also, as it was believed that if the appellant Yee Chung was shown to have falsely testified and to have presented false documents in support of his contention that he was the same Yee Chung discharged by the commissioner in Birmingham, Vermont, then it would naturally follow that the testimony produced by him on the other points must be viewed with discredit. The lower court decided that this appellant was not the same Yee Chung who was discharged by the commissioner in Vermont, and, having thus found the appellant to be false in that part of the testimony produced in his behalf, decided that the appellant had failed to establish his right to be in the United States to the court's satisfaction. (Chinese Exclusion Law; Amendment of May 5, 1892, section 3, 27 Stat., page 25.)

Upon the point of what amount of evidence should be produced to satisfy the court in a Chinese exclusion case, the court, in his opinion in the Yee Chung case, said:

> "I had occasion, in an oral opinion delivered in this court, late in January of last year, in the case of United States v. Jee Jan, to indicate my views as to the amount of evidence that ought to be produced in behalf of a person of Chinese descent, in one of these deportation cases, in order that the requirement of the statute that the court should be satisfied, might be had; and I see no reason to depart from the views there announced. The burden, I believe, is placed by the statute upon the defendant, and he must, by the evidence adduced in his behalf, "satisfy" the court, i. e., produce moral certainty or conviction (C. C. P. Sec. 1835) of the truthfulness of his claim. (186 U. S. 193.)"

It will thus be seen that the lower court cited his opinion in the Jee Jan case solely upon the amount of evidence that ought to be produced on behalf of a person of Chinese descent in a case arising under the exclusion laws, and did not cite the said Jee Jan case or refer to it in any particular upon the credibility of witnesses or the unreliability of Chinese testimony.

Counsel for appellee, in their brief filed in this court, set out at length the opinion of the lower court in the Jee Jan case, but did not set out the facts which led the lower court to express his opinion of Chinese testimony in the language excepted to by this court in its opinion in this case. This court quoted freely from the Jee Jan case upon the point of the credibility of Chinese testi-

mony, but we respectfully call this court's attention to the fact that the lower court did not impugn the Chinese testimony offered by appellant in this case, but, on the other hand, held that the United States proved that Yee Chung was not the same Yee Chung who was discharged by the commission in Vermont. Therefore, the remarks of the court in the Jee Jan case on the credibility of Chinese testimony does not apply in any manner to this case. Again, a court may be led to make remarks orally from the bench (and the Jee Jan opinion was rendered orally from the bench at the time the case was decided, and the copy of it set out in the brief of appellee in this case was taken from the reporter's notes and there is no opinion filed of record in the Jee Jan case) which the court would not desire to be published as a rule of law to apply to all cases, and, as a matter of fact, the Jee Jan case was an aggravated case involving fraud, and it is improbable that the lower court intended the words objected to by this court to apply in all cases and, certainly, his opinion as rendered in this case gives us no intimation that he discarded the Chinese testimony or refused to consider it or in any wise cast aspersion upon it.

But we would respectfully call this court's attention to the fact that through a long series of judicial decisions, statements and comments are found casting reflection upon Chinese testimony, to which cases we will hereafter more particularly allude, and Congress itself has seen fit to throw the gravest suspicions upon Chinese testimony by certain acts included in the different Chinese Exclusion Laws.

Let us consider briefly the history and development of the Chinese Exclusion Laws:

In this connection we cannot do better than to quote, somewhat at length, from the famous opinion of Justice Field in the Chinese Exclusion case, Chae Chan Ping v. United States, 130 U. S. 581: (Quoting from page 595):

> "In December, 1878, the convention which framed the present constitution of California, being in session, took this subject up, and memorialized Congress upon it, setting forth, in substance, that the presence of Chinese laborers had a baneful effect upon the material interests of the state, and upon public morals; that their immigration was in numbers approaching the character of an Oriental invasion, and was a menace to our civilization; that the discontent from this cause was not confined to any political party, or to any class or nationality, but was well-nigh universal; that they retained the habits and customs of their own country, and in fact constituted a Chinese settlement within the state, without any interest in our country or its institutions; and praying Congress to take measures to prevent their further immigration. This memorial was presented to Congress in February, 1879.
>
> "So urgent and constant were the prayers for relief against existing and anticipated evils, both from the public authorities of the Pacific Coast and from private individuals, that Congress was impelled to act on the subject. Many persons, however, both in and out of Congress, were of the opinion that so long as the treaty remained unmodified, legislation restricting immigration would be a breach of faith with China. A statute was accordingly passed appropriating money to send

commissioners to China to act with our minister there in negotiating and concluding by treaty a settlement of such matters of interest between the two governments as might be confided to them. 21 Stat. 133, Ch. 88. Such commissioners were appointed, and, as the result of their negotiations, the supplementary treaty of November 17, 1880, was concluded and ratified in May of the following year. 22 Stat. 826. It declares in its first article that 'Whenever, in the opinion of the Government of the United States, the coming of Chinese laborers to the United States, or their residence therein, affects or threatens to affect the interests of that country, or to endanger the good order of the said country or of any locality within the territory thereof, the Government of China agrees that the Government of the United States may regulate, limit, or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be reasonable and shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitations. Legislation taken in regard to Chinese laborers will be of such a character only as is necessary to enforce the regulation, limitation, or suspension of immigration, and immigrants shall not be subject to personal maltreatment or abuse.' In its second article it declares that 'Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States, shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nation.'

"The government of China thus agreed that notwithstanding the stipulations of former treaties, the United States might regulate, limit, or suspend the coming of Chinese laborers, or their residence therein, without absolutely forbidding it, whenever in their opinion the interests of the country, or of any part of it, might require such action. Legislation for such regulation, limitation, or suspension was entrusted to the discretion of our Government, with the condition that it should only be such as might be necessary for that purpose, and that the immigrants should not be maltreated or abused. On the 6th day of May, 1882, an act of Congress was approved, to carry this supplementary treaty into effect. 22 Stat. 58, C. 126. It is entitled 'An act to execute certain treaty stipulations relating to Chinese.' Its first section declares that after ninety days from the passage of the act, and for the period of ten years from its date, the coming of Chinese laborers to the United States is suspended, and that it shall be unlawful for any such laborer to come, or, having come, to remain within the United States. The second makes it a misdemeanor, punishable by fine, to which imprisonment may be added, for the master of any vessel knowingly to bring within the United States from a foreign country, and land, any Chinese laborer. The third provides that those two sections shall not apply to Chinese laborers who were in the United States November 17, 1880, or who should come within ninety days after the passage of the act. The fourth declares that, for the purpose of identifying the laborers who were here on the 17th of November, 1880, or who should come within the ninety days mentioned, and to furnish them with

'the proper evidence' of their right to go from and come to the United States, the 'collector of customs of the district from which any such Chinese laborer shall depart from the United States shall, in person or by deputy, go on board each vessel having on board any such Chinese laborer and cleared or about to sail from his district for a foreign port, and on such vessel make a list of all such Chinese laborers, which shall be entered in registry books to be kept for that purpose, in which shall be stated the name, age, occupation, last place of residence, physical marks or peculiarities and all facts necessary for the identification of each of such Chinese laborers, which books shall be safely kept in the custom-house;' and each laborer thus departing shall be entitled to receive from the collector or his deputy, a certificate containing such particulars, corresponding with the registry, as may serve to identify him. 'The certificate herein provided for,' says the section, 'shall entitle the Chinese laborer to whom the same is issued to return to and re-enter the United States upon producing and delivering the same to the collector of customs of the district at which such Chinese laborer shall seek to re-enter.'

"The enforcement of this act with respect to laborers who were in the United States on November 17, 1880, was attended with great embarrassment, from the suspicious nature, in many instances, of the testimony offered to establish the residence of the parties, arising from the loose notions entertained by the witnesses of the obligation of an oath. [Italics ours.] This fact led to a desire for further legislation restricting the evidence receivable, and the amendatory act of July 5, 1884,

was accordingly passed. 23 Stat. 115, C. 220. The committee of the House of Representatives on foreign affairs, to whom the original bill was referred, in reporting it back, recommending its passage, *stated that there had been such manifold evasions, as well as attempted evasions, of the act of 1882, that it had failed to meet the demands which called it into existence.* Report in H. R. No. 164, 48th Cong. 1st Sess. *To obviate the difficulties attending its enforcement the amendatory act of 1884 declared that the certificate which the laborer must obtain 'shall be the only evidence permissible to establish his right of re-entry' into the United States.* (Italics ours.)

"This act was held by this court not to require the certificate from laborers who were in the United States on the 17th of November, 1880, who had departed out of the country before May 6, 1882, and remained out until after July 5, 1884. *Chew Heong v. United States,* 112 U. S. 536. The same difficulties and embarrassments continued with respect to the proof of their former residence. Parties were able to pass successfully the required examination as to their residence before November 17, 1880, who it was generally believed, had never visited our shores. To prevent the possibility of the policy of excluding Chinese laborers being evaded, the act of October 1, 1888, the validity of which is the subject of consideration in this case, was passed. It is entitled 'An act a supplement to an act entitled "An act to execute certain treaty stipulations relating to Chinese," approved the sixth day of May, eighteen hundred and eighty-two.' 25 Stat. 504, C. 1064. It is as follows:

"'*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* That from and after the passage of this act, it shall be unlawful for any Chinese laborer who shall at any time heretofore have been, or who may now or hereafter be, a resident within the United States, and who shall have departed, or shall depart therefrom, and shall not have returned before the passage of this act, to return to, or remain in, the United States.

"'Sec. 2. That no certificates of identity provided for in the fourth and fifth sections of the act to which this is a supplement shall hereafter be issued; and every certificate heretofore issued in pursuance thereof is hereby declared void and of no effect, and the Chinese laborer claiming admission by virtue thereof shall not be permitted to enter the United States.

"'Sec. 3. That all the duties prescribed, liabilities, penalties, and forfeitures imposed, and the powers conferred by the second, tenth, eleventh and twelfth sections of the act to which this is a supplement, are hereby extended and made applicable to the provisions of this act.

"'Sec. 4. That all such part or parts of the act to which this is a supplement as are inconsistent herewith are hereby repealed.

"'Approved October 1, 1888.'"

After this opinion was handed down by the Supreme Court, Congress determined that even yet the law did not meet the exigencies of the case and, on May 5, 1892, amended the Chinese Exclusion Law to require all Chinese laborers in the United States to register, section 6 of this amendment reading as follows:

"And it shall be the duty of all Chinese laborers within the limits of the United States at the time of the passage of this act, and who are entitled to remain in the United States, to apply to the collector of internal revenue of their respective districts, within one year after the passage of this act, for a certificate of residence, and any Chinese laborer within the limits of the United States who shall neglect, fail, or refuse to comply with the provisions of this act, or who, after one year from the passage hereof, shall be found within the jurisdiction of the United States without such certificate of residence, shall be deemed and adjudged to be unlawfully within the United States, and may be arrested by any United States customs official, collector of internal revenue, or his deputies, United States marshal or his deputies, and taken before a United States judge, whose duty it shall be to order that he be deported from the United States, as hereinbefore provided, *unless he shall establish clearly to the satisfaction of said judge* that by reason of accident, sickness or other unavoidable cause, he has been unable to procure his certificate, and to the satisfaction of the court, and by at least *one credible white witness,* that he was a resident of the United States at the time of the passage of this act; and if upon the hearing it shall appear that he is so entitled to a certificate, it shall be granted upon his paying the cost." (Italics ours.)

and changed the rule of procedure to make it *incumbent upon the Chinese to establish his right to be in the United States,* section 3 reading:

"That any Chinese person or person of Chinese descent arrested under the provisions of this act

> or the acts hereby extended shall be adjudged to be unlawfully within the United States unless such person shall establish, by affirmative proof to the satisfaction of such justice, judge, or commissioner, his lawful right to remain in the United States."

It will thus be seen that Congress further recognized the inherent lack of reliability of Chinese testimony by thus further placing the burden upon a Chinese person to prove his right to be in the United States to the satisfaction of the justice, judge or commission and, in certain cases where a Chinese had failed to register under section 6 he must prove by at least one credible white witness (in 1893 changed to read "one credible witness other than Chinese") the fact that he was resident in the United States at the time of the registration, further showing that Congress absolutely refused to recognize Chinese testimony in matters of vital interest to the Chinese as a race. In 1893 Congress further amended section 2 of the act to make it read, in part, as follows:

> "Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this country as a merchant, *he shall establish by the testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States* * * *." (Italics ours.)

Here again Congress refused to recognize Chinese testimony as on a par with other testimony. On this point, Moore on Facts, Vol. 2, par. 1023, says:

"CHINESE.—In Chinese exclusion cases the testimony of Chinese witnesses, unknown and coming from a distance—especially that of foreigners—is regarded as more or less weak. The tribunal before which they speak knows little of them, and they care little for it, and may have no respect for the laws of this country. They have little to fear from having their falsehoods exposed, as there is little danger of conviction of perjury, and they lose nothing in reputation among their fellows."

The constitutionality of the acts of Congress in thus discriminating against Chinese testimony was upheld in the case of Fong Yue Ting v. United States, 149 U. S. 698, wherein the court said (quoting from page 729 of the opinion):

"The provision which puts the burden of proof upon him of rebutting the presumption arising from his having no certificate, as well as the requirement of proof, 'by at least one credible white witness, that he was a resident of the United States at the time of the passage of this act,' is within the acknowledged power of every legislature to prescribe the evidence which shall be received, and the effect of that evidence, in the courts of its own government. *Ogden v. Saunders,* 12 Wheat. 213, 262, 349; *Pillow v. Roberts,* 13 How. 472, 476; *Cliquot's Champagne,* 3 Wall. 114, 143; *Ex parte Fisk,* 113 U. S. 713, 721; *Holmes v. Hunt,* 122 Mass. 505, 516-519. The competency of all witnesses, without regard to their color, to testify in the courts of the United States, rests on acts of Congress, which Congress may at its discretion modify or repeal. Rev. Stat., Secs. 858, 1977. The reason for requiring a Chinese alien, claiming the privilege of remaining

in the United States, to prove the fact of his residence here, at the time of the passage of the act, 'by at least one credible white witness,' may have been the experience of Congress, mentioned by Mr. Justice Field in *Chae Chan Ping's case,* that the enforcement of former acts, under which the testimony of Chinese persons was admitted to prove similar facts, 'was attended with great embarrassment, from the suspicious nature, in many instances, of the testimony offered to establish the residence of the parties, arising from the loose notions entertained by the witnesses of the obligation of an oath.' 130 U. S. 598. And this requirement, not allowing such a fact to be proved solely by the testimony of aliens in a like situation, or of the same race, is quite analogous to the provision, which has existed for seventy-seven years in the naturalization laws, by which aliens applying for naturalization must prove their residence within the limits and under the jurisdiction of the United States, for five years next preceding, 'by the oath or affirmation of citizens of the United States.' Acts of March 22, 1816, c. 32, Sec. 2, 3 Stat. 259; May 24, 1828, c. 116, Sec. 2, 4 Stat. 311; Rev. Stat., Sec. 2165, cl. 6; 2 Kent Com. 65."

This language of the Supreme Court in the Fong Yue Ting case was cited with approval by the same court in a later case: Li Sing v. United States, 180 U. S. 494.

In the case of Quock Ting v. United States, 140 U. S. 417, the court held that uncontradicted evidence of interested witnesses about an improbable fact does not require judgment to be rendered accordingly. In this case the Supreme Court upheld the order of the

lower court ordering the appellant (a Chinese) deported although appellant himself testified to being born in San Francisco, his father testified he was born in San Francisco, and certain book entries were introduced to corroborate their statements, and no witness was called on behalf of the Government to contradict their statements.

In the case of Low Foon Yin v. United States *et al.*, 145 Federal 791, this court (Judge Ross writing the opinion) quoted with approval the following language from the case of United States v. Wong Dep Ken (57 Fed. 206):

> " 'No one questions the power of Congress to prohibit the coming into this country of any class of foreigners deemed prejudicial to the interests of our people. Against the coming into the country of Chinese laborers, Congress has been legislating for years. The reason for such legislation is an old story, and need not be repeated. But, notwithstanding the enactments upon the subject, *the laws have been evaded in many ways. By false testimony and concocted evidence the courts have been imposed upon in cases almost without number, and by sea and land the prohibited class in large numbers have been smuggled into the country in one way or another.* (Italics ours.) To prevent all of this, and give effect to its laws upon the subject, as far as possible, Congress deemed it wise by the provision in question to put the burden of proof of his lawful right to remain in the United States on the Chinese person or person of Chinese descent charged with being unlawfully within their borders. To those not residents of and not familiar with the Pacific slope, and not

so much subject to the evils intended to be guarded against by the exclusion acts, "the lines laid down for their enforcement may," as appropriately and well said by Judge Severens in the case of Sing Lee (D. C.), 54 Fed. 334, "seem hard; and because such summary dealings with the rights of persons are out of the common order to which we are accustomed, and are liable to produce injustice in many cases on account of their summary expedition and the presumption against the prisoners, they may seem severe; but, if the power resides in Congress to enact such provisions, the discretion whether it will do so rests in the law-making power, and the courts must presume it was exercised upon sufficient reasons." In respect to the provision of the Geary Act putting the burden of proof on those coming within the class thus interdicted, I agree with the provisions of the Constitution of the United States, but, for the reasons given by him, and in view of the circumstances already referred to and of others that may be suggested, that the provision in question is not unreasonable, he says:

" ' "The person brought before the commissioner is one of a class which, by the terms of the statute, is obnoxious to its operation. That must appear before the general jurisdiction can be exercised, and, since, generally, that class is interdicted, he can only escape the common lot upon its appearing that he is now within the general condemnation. The means of showing this are presumably in his own control. It would be extremely inconvenient, and probably in most cases impracticable, for the government to bring proof of the negative fact that the respondent is not within the exemption. Such circumstances are the basis of the rule

of evidence which devolves the burden on the party who presumably has the best means of proving the fact; but, whatever the rule which by the common law would be applicable to trials, it cannot be affirmed that in such conditions the legislature cannot prescribe such a rule of evidence." ' "

Thus this court has recognized the unreliability of Chinese testimony in certain cases.

In the case of United States v. Lee Huen and fourteen others, 118 Federal 442, Judge Ray said, in part, as follows:

"So, too, it is common knowledge that enslaved peoples develop an inordinate propensity for lying, and this is characteristic of most oriental nations. This comes largely from their being subject to the caprice and exactions of their masters or superiors, and, having no sense of moral responsibility to them, they come to regard lying to them as no sin, and an habitual disregard of the truth is thus engendered. (Italics ours.) See 1 Tayl. Ev. (Ed. 1897, Am. Notes), Secs. 53, 56. See, also, Chae Chan Ping v. U. S., 730, 13 Sup. Ct. 598, 9 Sup. Ct. 623, 32 L. Ed. 1068, and 149 U. S. 730, 13 Sup. Ct. 1016, 37 L. Ed. 905. *Hence in all these Chinese exclusion cases the testimony of Chinese witnesses, unknown and coming from a distance,—especially that of foreigners,—may be regarded as more or less weak; and, when contradicted or really impeached in any of the modes suggested and recognized by our law, the commissioner is justified in regarding such testimony, standing alone, as insufficient to convince the judicial mind. This conclusion must not be reached arbitrarily or capriciously or from prejudice, but from conviction*

that the case is not made out; and in such cases the appellate court or judge is not justified in reversing the findings of the tribunal which had the opportunity of observing the witness, and noting his manner and sincerity or want of sincerity in giving testimony. It is true that an intelligent and experienced judge often detects the falsehood of a witness who tells a story which, reduced to writing, reads smooth as the Psalms of David." (Italics ours.)

We also call the court's attention to the following cases in which the courts have decided that the burden thrown upon a Chinese in exclusion cases was not met by the testimony offered, in most of which cases the testimony was that of Chinese witnesses, showing that the courts, as a general rule, look with disfavor upon Chinese testimony alone, and that they have seldom been "satisfied" of the alien's right to remain in the United States where such right rested solely upon Chinese testimony.

Arnk Bing *et al.* v. U. S., 238 Fed. 348;
U. S. v. Hen Lee, 236 Fed. 794;
U. S. v. Williams, 83 Fed. 997;
Ex parte Chin Him *et al.*, 227 Fed. 131;
U. S. v. Leung Sam *et al.*, 114 Fed. 702;
U. S. v. Moy Toom, 224 Fed. 521;
Wong Woo v. U. S., 240 Fed. 673;
In re Louie You, 97 Fed. 580;
In re Jew Wong Loy, 91 Fed. 240;
In re Hui Gnow Doy, 91 Fed. 1006;
Wong Chun v. U. S., 170 Fed. 182;
In re Ho Quai Sin, 84 Fed. 310;
Lee Yuen Sue v. U. S., 146 Fed. 670;
Yee Ging v. U. S., 190 Fed. 270.

We therefore respectfully submit that there are cases in which it is eminently proper to reject Chinese testimony, and in those cases where Chinese testimony is accepted, it is proper to view it with more than ordinary scrutiny, by reason of the decisions above cited, and the attitude of Congress in its laws relating to Chinese testimony.

We are constrained to believe that had the government not placed in its brief that portion of the opinion of the lower court in the Jee Jan case, to which this court took exception, this court would not have arrived at the same conclusion as it did in this case, and we therefore respectfully submit that the government should be granted a rehearing.

In our brief filed in this case, we did not cite all of the authorities upon the question that where the commissioner and lower court heard the witnesses and ordered a Chinese person deported, the upper court would not overturn their findings of fact. In addition to the cases cited there, we would respectfully call the court's attention to the following cases upon that point:

United States v. Leung Sam, 114 Fed. 702;
Li Sing v. United States, 180 U. S. 486;
Lee Yu v. United States, 133 Fed. 45;
Hong Yon v. United States, 164 Fed. 330;
Wong Chun v. United States, 170 Fed. 182;
Jew Lee v. United States, 237 Fed. 1013;
Arnk Bing v. United States, 238 Fed. 348.

After a careful reading of these cases above cited, and the authorities therein referred to, we do not be-

lieve that this court would have disturbed the findings of fact of the lower court and of the commissioner if it had considered this case separate and apart from the remarks of the lower court in the Jee Jan case, and if this court was convinced that the lower court acted without prejudice in the matter, and we believe this to be true beyond peradventure of doubt. We believe that the explanation hereinbefore made concerning the Jee Jan case conclusively shows that the lower court did not intend to reject the Chinese testimony in this case *in toto* by reason of its being Chinese testimony, and that in fact he did not so do, but that after a fair and impartial consideration of all of the evidence, he was not satisfied to the degree mentioned in the statute of the claim of Yee Chung that he was the same Yee Chung who was discharged by the commissioner in Vermont, and, basing his opinion in the case upon his conclusions on that point, rejected the other testimony in the case as irreconcilable with his findings of fact on that point.

We would, finally, show to the court that the appellant in this case stipulated with the appellee that the case might be submitted to this court upon written briefs without oral argument, and, on October 6, 1916, an order was entered in this court to that effect. Thereafter, appellant filed a reply brief to the brief of appellee although there is no rule of this court or precedent for such procedure without the consent of the court, which, in this case, if granted, was never called to our attention.

Appellant's reply brief deals solely with the lower court's opinion in the Jee Jan case, and appellee has

never until this time had opportunity to answer the reply brief of appellant and to make explanation of those matters therein referred to. Had there been an oral argument, we believe that we would have been able to have successfully rebutted any presumption of prejudice arising in this case by reason of the lower court's opinion in the Jee Jan case.

As to the facts as we view them in this case, we would again respectfully call the court's attention to our brief heretofore filed in this case.

We would therefore most earnestly submit that the government should be granted a rehearing in this case.

Respectfully submitted,

ALBERT SCHOONOVER,
United States Attorney;
CLYDE R. MOODY,
Assistant United States Attorney,
Attorneys for Appellee.

No. 2802

Re 2800

United States

Circuit Court of Appeals

For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

SUI JOY,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Territory of Hawaii.

Filed
JUN 29 1916
F. D. Monckton,

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

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W. L. STANLEY, Esq., #313 Kauikeolani Bldg., Honolulu, Hawaii.

For Respondent, RICHARD L. HALSEY, Esq., United States Immigration Inspector in Charge at the Port of Honolulu.

S. C. HUBER, Esq., United States District Attorney, Honolulu, Hawaii. [1*]

In the United States District Court, in and for the District and Territory of Hawaii.

No. 75.

In the Matter of the Application of SUI JOY for a Writ of Habeas Corpus.

Order Extending Time to April 15, 1916, to Transmit Record on Appeal.

Now on this 16th day of March, A. D. 1916, it appearing from the representations of the clerk of this court, that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of error in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is

*Page-number appearing at foot of page of original certified Record.

ordered that the time within which the clerk of this court shall prepare and transmit said transcript of the record on assignment of error in this cause, together with the said assignment of errors, and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to April 15th, 1916.

Dated, Honolulu, T. H., March 16th, 1916.

CHAS. F. CLEMONS,
Judge, U. S. District Court.

Due service of the above order, and receipt of a copy thereof are hereby admitted this 16th day of March, A. D. 1916.

THOMPSON, MILVERTON & CATHCART,
J. W. CATHCART,
By C. S. FRANKLIN.

[Endorsed]: #75. In the U. S. District Court, Territory of Hawaii. In the Matter of the Application of Sui Joy for a Writ of Habeas Corpus. Order Extending Time. Filed Mar. 16, 1916. Geo. R. Clark, Clerk. By Wm. L. Rosa, Deputy Clerk. [2]

In the United States District Court, in and for the District and Territory of Hawaii.

No. 75.

In the Matter of the Application of SUI JOY for a Writ of Habeas Corpus.

Order Extending Time to May 15, 1916, to Transmit Record on Appeal.

Now, on this 15th day of April, A. D. 1916, it ap-

pearing from the representations of the clerk of this court, that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of error, in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this court shall prepare and transmit said transcript of the record on assignment of error in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to May 15, 1916.

Dated, Honolulu, T. H., April 15, 1916.

CHAS. F. CLEMONS,
Judge, U. S. District Court.

Due service of the above order, and receipt of a copy thereof are hereby admitted this 15th day of April, A. D. 1916.

THOMPSON, MILVERTON & CATHCART,
C. S. F.

[Endorsed]: #75. In the United States District Court, for the Territory of Hawaii. In the Matter of the Application of Sui Joy for a Writ of Habeas Corpus. Order Extending Time to Transmit Record on Appeal. Filed Apr. 15, 1916. George R. Clark, Clerk. By Wm. L. Rosa, Deputy Clerk.

[3]

In the United States District Court, in and for the District and Territory of Hawaii.

No. 75.

In the Matter of the Application of SUI JOY for a Writ of Habeas Corpus.

Order Extending Time to June 15, 1916, to Transmit Record on Appeal.

Now on this 15th day of May, A. D. 1916, it appearing from the representations of the clerk of this court, that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of error in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this court shall prepare and transmit said transcript of the record on assignment of error in this cause, together with the said assignment or errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to June 15, 1916.

Dated Honolulu, T. H., May 15th, 1916.

CHAS. F. CLEMONS,
Judge, U. S. District Court.

Due service of the above order, and receipt of a

copy thereof are hereby admitted this 15th day of May, A. D. 1916.

S. C. HUBER,
U. S. Attorney.
THOMPSON, MILVERTON & CATHCART,
C. S. F.

[Endorsed]: #75. United States District Court, Territory of Hawaii. In the Matter of the Application of Sui Joy for a Writ of Habeas Corpus. Filed May 15, 1916. George R. Clark, Clerk. By Ray B. Rietow, Deputy Clerk. [4]

In the United States District Court for the Territory of Hawaii.

No. 75.

In the Matter of the Application of SUI JOY for a Writ of Habeas Corpus.

Statement of Clerk.

TIME OF COMMENCEMENT OF SUIT.

October 18, 1914; Verified petition for writ of habeas corpus and order for issuance and writ of habeas corpus and marshal's return thereon.

NAMES OF ORIGINAL PARTIES.

Petitioner: Sui Joy.

Respondent: Richard L. Halsey, Esq.,
U. S. Inspector of Immigration in charge at the Port of Honolulu.

DATES OF FILING OF THE PLEADINGS.

October 18, 1913: Petition.

October 22, 1913: Demurrer to petition.

October 28, 1913: Return of Richard L. Halsey, Esq.

December 1, 1913: Demurrer to return of R. L. Halsey, to the writ of habeas corpus.

SERVICE OF PROCESS.

October 18, 1913: Writ issued and delivered to the United States Marshal for the District of Hawaii. Said writ was afterwards returned into court with the following return by the said United States Marshal: "The within petition, order and writ of habeas corpus were received by me on the 18th day of October, A. D. 1913, at 8:15 P. M., and in obedience thereto I have served the same upon Richard L. Halsey, United States Immigration Inspector-in-charge at the Port of Honolulu, in [5] Honolulu, on the 18th day of October, A. D. 1913, and upon C. C. Bitting, Assistant United States District Attorney, in Honolulu, on the 20th day of October, A. D. 1913, by handing to and leaving with each of them a certified copy of the within petition, order and writ of habeas corpus, and in further obedience thereto I hereby produce the body of the within-named Sui Joy forthwith before this Court. The within writs returned this 20th day of October, A. D. 1913. (Sgd.) E. R. Hendry, United States Marshal.

Dated, Honolulu, T. H., October 18, 1913."

HEARINGS.

October 23, 1913: Proceedings at hearing on demurrer to petition and continuance to October 24, 1913, for decision.

October 25, 1913: Proceedings at decision overruling demurrer to petition.

December 1, 1913: Proceedings at hearing on demurrer to return and order in re briefs.

March 16, 1914: Proceedings at hearing, case taken under advisement and briefs ordered filed.

May 28, 1915: Proceedings at argument and order in re briefs.

August 2, 1915: Proceedings at decision sustaining demurrer to respondent's return and order continuing case to August 3, 1915, for taking of testimony as to length of residence of applicant in Hawaii.

August 4, 1915: Proceedings at supplementary decision discharging applicant under writ.

The above hearings were had before the Honorable SANFORD B. DOLE, Judge of said Court. [6]

DECISIONS.

October 25, 1913: Decision overruling respondent's demurrer to petition.

August 2, 1915: Decision sustaining demurrer to respondent's return.

August 4, 1915: Supplementary decision discharging applicant under writ.

December 16, 1915: Judgment filed and entered (Dole, J.)

PETITION FOR APPEAL.

February 15, 1916: Petition for appeal and order allowing same filed.

United States of America,
Territory of Hawaii,—ss.

I, George R. Clark, clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the

above-entitled suit; the names of the original parties thereto; the several dates when the respective pleadings were filed; and account of the proceedings showing the service of the petition and writ of habeas corpus, and the time when the judgment herein was rendered and the Judge rendering the same, in the matter of the application of Sui Joy for a writ of habeas corpus, Number 75, in the United States District Court for the Territory of Hawaii.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 23d day of May, A. D. 1916.

[Seal] GEORGE R. CLARK,
Clerk, United States District Court, Territory of Hawaii. [7]

In the District Court of the United States, in and for the District and Territory of Hawaii.

In the Matter of the Application of SUI JOY for a Writ of Habeas Corpus.

Petition for Writ of Habeas Corpus.

To the Honorable SANFORD B. DOLE, Judge of the United States District Court, in and for the District and Territory of Hawaii:

Comes now Ching Shai, as the next friend of Sui Joy, and respectfully shows unto your Honor and your Honorable Court as follows, to wit:

1. That he makes this application for the said Sui Joy as his next friend, on his behalf and by his authority, for the reason that he, the said Sui Joy, is incarcerated and now is in the custody of R. L. Hal-

sey, Inspector-in-charge of Immigration, for the United States in and for the District and Territory of Hawaii, and that he is unlawfully held by the said R. L. Halsey, and because he is so held by the said R. L. Halsey, is unable to sign this petition in his own behalf.

2. Your petitioner further says that the said Sui Joy is a citizen of the Republic of China; that for more than 35 years last past, he has been a resident of the city and county of Honolulu, Territory of Hawaii; that he, the said Sui Joy, is a resident property holder, holding property in said Territory of Hawaii in the sum of $2500 and over; that he is a merchant, and is engaged in the hardware business conducted by the Market Hardware Company in the said city and county of Honolulu.

3. That said Sui Joy has not absented himself from [8] the said territory for a period of more than four years last past, and your petitioner further alleges that the said Sui Joy is now confined in the United States Immigration Station in said city and county of Honolulu, Territory of Hawaii, and unlawfully restrained from his liberty and prevented from being enlarged by the said R. L. Halsey, inspector-in-charge of immigration as aforesaid.

4. That the said Sui Joy is not an undesirable immigrant within the meaning of the laws of the Territory of Hawaii.

5. That your petitioner, acting for and on behalf of said Sui Joy, and on his authority did, on the 18th day of October, A. D. 1913, make application to the said R. L. Halsey to have said Sui Joy en-

larged upon bail; and then and there tendered good and sufficient securities for a bond of such amount as said R. L. Halsey might require. That said R. L. Halsey then and there declined to enlarge the said Sui Joy, upon any bond, and stated that he was being held for investigation by the Immigration authorities of the United States in and for the Territory of Hawaii.

6. That the said Sui Joy is not now and has not been charged with the commission of any crime or offense against the laws of the United States relating to immigration.

7. Your petitioner further says that, upon his application to have the said Sui Joy enlarged upon bond, said R. L. Halsey stated to him that said Sui Joy would at his, said Halsey's convenience, be permitted a hearing, but he declined to say at what time said hearing would be held.

8. Your petitioner further says that thereafter application was made to said R. L. Halsey for permission to allow the said Sui Joy to be represented by counsel, but the said R. L. Halsey declined to permit the said Sui Joy to see or talk with counsel, and declined to have counsel represent him. [9]

9. That all and singular the premises are true and within the jurisdiction of your Honor and this Honorable Court.

WHEREFORE, this petitioner prays that a writ of habeas corpus be issued out of this Honorable Court by your Honor, commanding the said R. L. Halsey to have and produce the body of said Sui Joy before this Honorable Court at such time and place

as the court may direct, and pending the action hereon, that said Sui Joy be enlarged upon by such bond as your Honor may require in the premises.

Dated Honolulu, October 18, 1913.

(Sgd.) CHING SHAI,
His Next Friend,
Petitioner.

United States of America,
Territory of Hawaii,
City and County of Honolulu,—ss.

Ching Shai, being first duly sworn deposes and says, that he is the petitioner named in the foregoing petition, being named therein as the next friend of Sui Joy, that he has been acquainted with the said Sui Joy, the person unlawfully detained, for a period of twenty years and over; that during all of said period, they have been intimately associated in social matters and business transactions; that he knows of his own knowledge the said Sui Joy is the identical person he represents himself to be, and the person now unlawfully detained by the said R. L. Halsey; that he has read the foregoing petition and that the same is true to the best of his knowledge, information and belief; that he makes this application and this verification in good faith and not for the purpose of aiding in the evasion of any of the laws of the United States, and that the reason why this verification and petition are not made by the said Sui Joy is for the reason that the said Sui Joy is unable to communicate with counsel, and because, of his detention as aforesaid, is unable to sign and verify the same in person.

(Sgd.) CHING SHAI.

Subscribed and sworn to before me this 18th day of Oct., 1913.

[Seal] (Sgd.) BERNICE K. DWIGHT,
Notary Public, First Judicial Circuit, Territory of Hawaii. [10]

In the District Court of the United States in and for the District and Territory of Hawaii.

In the Matter of the Application of SUI JOY for a Writ of Habeas Corpus.

Order Directing Issuance of Writ of Habeas Corpus, etc.

Upon reading the foregoing petition, let a writ of habeas corpus issue as prayed for forthwith and, upon the filing of a bond in the sum of $1,000 with good and sufficient sureties, let the said Sui Joy be released to appear before this Court on Monday, October 20th, 1913, at the hour of ten o'clock A. M., and let a copy of this petition, order and writ be served upon the Honorable R. W. Breckons, United States District Attorney, or his deputy.

Dated Honolulu, this 18th day of October, A. D. 1913.

(Sgd.) S. B. DOLE,
United States District Judge of the United States District Court in and for the District of Hawaii. [11]

Writ of Habeas Corpus.

The President of the United States of America, to R. L. HALSEY, Inspector-in-Charge of Immigration in and for the District and Territory of Hawaii:

We strictly command and enjoin you that you have and produce before the United States District Court, in and for the District and Territory of Hawaii forthwith, the body of Sui Joy, and that you do on the 20th day of October, A. D. 1913, at the hour of ten o'clock A. M., in the courtroom of said court at Honolulu, disclose the cause of his imprisonment and detention and then and there receive, undergo and have what the said United States District Court shall consider right, and in accordance with the law of the land concerning him, the said Sui Joy, and to abide the judgment of the Court in this behalf.

And we do hereby further command the United States Marshal in and for the District and Territory of Hawaii to serve this writ of habeas corpus upon the said R. L. Halsey, and make due return hereof, together with this writ.

Hereof fail not at your peril.

WITNESS the Honorable SANFORD B. DOLE, Judge of the United States District Court, in and for the District and Territory of Hawaii, this 18th day of October, A. D. 1913.

By the United States District Court.

[Seal] A. E. MURPHY,

Clerk of the Above-entitled Court.

By (Sgd.) F. L. DAVIS,

Deputy Clerk. **[12]**

MARSHAL'S RETURN.

United States Marshal's Office.

The within petition, order and writ of habeas corpus were received by me on the 18th day of October, A. D. 1913, at 8:15 P. M., and in obedience thereto I have served the same upon Richard L. Halsey, United States Immigration Inspector-in-Charge at the port of Honolulu, in Honolulu, on the 18th day of October, A. D. 1913, and upon C. C. Bitting, Assistant United States District Attorney, in Honolulu on the 20th day of October, A. D. 1913, by handing to and leaving with each of them a certified copy of the within petition, order and writ of habeas corpus, and in further obdience thereto I hereby produce the body of the within-named SUI JOY forthwith before this Court. The within writs returned this 20th day of October, A. D. 1913.

E. R. HENDRY,

United States Marshal.

Dated, Honolulu, T. H., October 18, 1913.

[Endorsed]: No. 75. (Title of Court and Cause.) Petition for Writ, Order and Writ. Filed Oct. 18, 1913. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. **[13]**

In the District Court of the United States in and for the District and Territory of Hawaii.

In the Matter of the Application of SUI JOY for a Writ of Habeas Corpus.

Bond for Appearance.

KNOW ALL MEN BY THESE PRESENTS: That we, Hong Quon and Wong Chee, both residents of the city and county of Honolulu, Territory of Hawaii, are held and firmly bound unto E. R. Hendry, United States Marshal in and for the District and Territory of Hawaii, in the penal sum of $1,000 for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated the 18th day of October, A. D. 1913.

The condition of this obligation is such that if Sui Joy now detained by R. L. Halsey, Inspector-in-charge of Immigration, in and for the Territory of Hawaii, and sought to be enlarged upon by a writ of habeas corpus, shall appear before the United States District Court, in and for the District and Territory of Hawaii, on the 20th day of October, at the hour of 10 o'clock A. M., as by order of Court filed herewith, he is required to do, and shall thereafter appear before said Court at such time as it may direct, then this obligation to be void, otherwise to remain in full force and effect.

(Sgd.) HONG QUON.
(Sgd.) WONG CHEE.

The foregoing bond is approved as to form, amount and sureties.

(Sgd.) S. B. DOLE,
Judge Above-entitled Court. **[14]**

[Endorsed]: No. 75. (Title of Court and Cause.)

Bond. Filed Oct. 18, 1913. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. **[15]**

Order Continuing Hearing to October 22, 1913.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Monday, October 20, 1913, Vol. 8, page 654.

(Title of Court and Cause.)

On his day came Mr. E. M. Watson, of the firm of Thompson, Wilder, Watson & Lymer, counsel for the above petitioner, and also came Mr. C. C. Bitting, Assistant United States Attorney, on behalf of the respondent herein, Richard L. Halsey, and this cause was called for hearing on return. Thereupon, on motion of Mr. Bitting and consent of Mr. Watson, it was by the Court ordered that this cause be continued to October 22, 1913, at 10 o'clock A. M., for hearing on said return. **[16]**

Order Continuing Hearing to October 23, 1913.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Wednesday, October 22, 1913, Vol. 8, page 658.

(Title of Court and Cause.)

The within cause having been called on this day for hearing on return, and none of counsel for the respective parties being present, it was by the Court ordered that this cause be continued until October 23, 1913, at 10 o'clock A. M., for hearing on said return. **[17]**

In the United States District Court for the Territory of Hawaii.

In the Matter of the Application of SUI JOY for a Writ of Habeas Corpus.

Demurrer to Petition for Writ of Habeas Corpus.

Comes now Richard L. Halsey, the respondent named in the petition herein, and demurs to the petition herein filed, and for grounds of his demurrer says:

First. That the said petition and application for the writ of habeas corpus does not set forth the facts concerning the detention of the party alleged to be restrained.

Second. That the said petition does not set forth by virtue of what claim or authority the petitioner is detained.

Third. That said petition does not state, nor in any manner show that the petitioner does not know by virtue of what claim or authority the said Sui Joy is detained.

WHEREFORE, your respondent prays that the said petition may be dismissed, and the writ and order thereupon issued may be discharged, and the petitioner remanded to the custody whence he came.

RICHARD L. HALSEY,
Inspector-in-Charge.

By (Sgd.) C. C. BITTING,
Assistant U. S. Attorney.

Dated this 22d day of October, A. D. 1913.

[Endorsed]: No. 75. (Title of Court and Cause.) Demurrer to Petition. Filed Oct. 22, 1913. A. E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. [18]

Order Continuing Hearing to October 24, 1913.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Thursday, October 23, 1913, Vol. 8, page 659.

(Title of Court and Cause.)

On this day came the above petitioner in person, and with Messrs. F. E. Thompson, A. A. Wilder and B. S. Ulrich, of the firm of Thompson, Wilder, Watson & Lymer, counsel for said petitioner, and also came Mr. Richard L. Halsey, the respondent herein in person and with Mr. C. C. Bitting, Assistant United States Attorney, and this cause was called

for hearing on the return of the respondent herein. Thereupon Mr. Bitting filed respondent's demurrer to the petition herein, and due argument having been had thereon by respective counsel, it was by the Court ordered that this cause be continued to October 24, 1913, at 10 o'clock A. M., for decision on said demurrer. **[19]**

Order Continuing Hearing to October 25, 1913.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Friday, October 24, 1913, Vol. 8, page 661.

(Title of Court and Cause.)

On this day came the above petitioner, in person and with his counsel, Messrs. A. A. Wilder and B. S. Ulrich, of the firm of Thompson, Wilder, Watson & Lymer, and also came the respondent, Richard L. Halsey, in person, and with Mr. C. C. Bitting, Assitant United States Attorney, and this cause was called for decision on demurrer to the petition herein. Thereupon it was by the Court ordered that this cause be continued to October 25, 1913, at 10 o'clock A. M., for decision on said demurrer. **[20]**

Order Overruling Demurrer to Petition for Writ of Habeas Corpus, etc.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Saturday, October 25, 1913, Vol. 8, page 663.

(Title of Court and Cause.)

On this day came the above petitioner, in person, and with his counsel, Mr. A. A. Wilder and B. S. Ulrich, of the firm of Thompson, Wilder, Watson & Lymer, and also came Mr. Richard L. Halsey, the respondent herein, in person and with C. C. Bitting, Assistant United States Attorney, and this cause was called for decision on demurrer to the petition herein. Thereupon the Court read its decision overruling the said demurrer and allowing the respondent until October 28, 1913, within which to file a return to the writ herein. **[21]**

In the United States District Court for the Territory of Hawaii.

October, A. D. 1913, Term.

No. 73.

In the Matter of the Application of CHUNG LUM for a Writ of Habeas Corpus.

No. 74.

In the Matter of the Application of WONG YUEN for a Writ of Habeas Corpus.

No. 75.

In the Matter of the Application of SUI JOY for a Writ of Habeas Corpus.

Opinion on Demurrer to Petition for Writ of Habeas Corpus.

October 25, 1913.

Habeas Corpus—Delay of writ until remedies below exhausted: On a petition for habeas corpus the Court will not usually grant the writ, except under peculiar and urgent circumstances, until the petitioner has exhausted his remedies before the authority detaining him and on appeal therefrom.

Immigration acts—Detention of persons charged with violation thereof: Temporary detention of persons charged with offenses under the immigration acts, pending inquiry, is valid.

Arrest—Probable cause: Arrest of persons without probable cause unauthorized. **[22]**

Same—Grounding: Upon arrest of a person, he or his counsel should be informed of the grounds thereof.

Habeas Corpus: Demurrer to petition.

THOMPSON, WILDER, WATSON & LYMER, for Petitioners.

C. C. BITTING, Asistant U. S. District Attorney, for Respondent.

The petitions in these cases claim that the persons in whose behalf the petitions are made are unlawfully restrained of their liberty and prevented from being at large by R. L. Halsey, Inspector-in-Charge

of Immigration; also that the said Halsey had stated that such persons were being held for investigation by the immigration authorities of the United States in and for the Territory of Hawaii, and further allege that such persons are not now and have "not been charged with the commission of any crime or offense against the laws of the United States relating to immigration."

The precedents in habeas corpus cases in the United States courts, particularly in the supreme court, emphasize and reiterate the practice that although a federal court with power to grant a writ of habeas corpus may grant such writ and discharge the accused in advance of his trial under an indictment, it is not bound to exercise that power immediately upon the application being made for the writ, but may await the result of the trial, and in its discretion as the special **[23]** circumstances of the case may require, put the petitioner to his writ of error from the highest court of the State. Ex parte Terry, 128 U. S. 289, 302.

In the case of Whitten vs. Tomlinson, 160 U. S. 231, 242, and citing many cases in the Supreme Court, the Court says:

> "But, except in such peculiar and urgent cases previously mentioned, the courts of the United States will not discharge the prisoner by habeas corpus in advance of a final determination of his case in the courts of the State; and, even after such final determination in those courts, will generally leave the petitioner to the usual and orderly course of proceeding by writ of error from this court."

The Court has followed this practice, and in the recent case of Ryonosuke Sakaba dismissed the petition for a writ on the ground that the applicant had not exhausted the remedies before the imigration officers, and still more recently the Court refused to make any order on the petition for the writ, because the usual proceedings before the immigration officers had not taken place. This practice is, I think, a reasonable one both for clients and the Court. It will tend to prevent cases from being brought which ought not to be brought, and to put the Court in a position to try to hear petitions where the remedies below have been exhausted, on the basis of a clear understanding. [24]

It is "clear that detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid. Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character and while arrangements were being made for their deportation."

Accused of what? This expression "those accused," in the citation *fro,* Wong Wing vs. United States, 163 U. S. 228, 235, implies that the person held in custody is accused of something. In other words, has been arrested, in the words of the Constitution, "upon probable cause."

For the purposes of this demurrer, the allegations that the persons arrested are not now and have not been charged with the commission of any crime or offense against the United States relating to immi-

gration must be taken as true. It cannot be argued that they might have been arrested for some other offense not relating to immigration, inasmuch as a previous allegation which must also be admitted to be true, refers to the statement of the respondent that such persons were being held for "investigation by the immigration authorities of the United States in and for the Territory of Hawaii," thus limiting the possible grounds of arrest to offenses under the immigration laws. [25]

I know of no provision in the federal laws authorizing the arrest of anyone without probable cause merely for purpose of investigation.

If the immigration officers had informed counsel for the prisoners upon what charge they were detained, in case a charge had been made against them, such facts would have been stated in the petitions for the writs and the court would then have ascertained that the prisoners were not unlawfully deprived of their liberty, and upon such information would have been in a position to have denied the writs, leaving the prisoners to the proceedings provided by law for an investigation and treatment of such offenses as were within the jurisdiction of the Secretary of Labor and his agents.

As the cases stand, however, on the petitions and the demurrers, the Court feels compelled to overrule the demurrers and leave the respondent to state his authority and the grounds of making the arrests complained of in his return.

(Sgd.) SANFORD B. DOLE,
Judge, United States District Court.

[Endorsed]: No. 73. (Title of Court and Cause.) Filed Oct. 25, 1913. (Decision of Dole, J., Overruling Demurrer to Petition.) A. E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. [26]

In the United States District Court for the Territory of Hawaii.

In the Matter of the Application of SUI JOY for a Writ of Habeas Corpus.

Return of Richard L. Halsey, Inspector-in-charge of Immigration at the Port of Honolulu, to the Writ of Habeas Corpus Heretofore in This Cause Issued.

Comes now Richard L. Halsey, respondent above named, and by way of return to the writ of habeas corpus herein issued, respectfully shows:

First. That he is unable at this time, and has been unable since the service of the writ of habeas corpus upon himself, to produce the body of the said Sui Joy, as by said writ ordered, because that by the order of this Court, improvidently issued, as respondent says, the said Sui Joy had been and has been removed from his custody.

Second. That the writ herein issued, and the order for enlargement upon bail, was ordered by the Court without previous notices, as required by rule, having been given to the United States Attorney, or to the Assistant United States Attorney; [27] and by reason thereof respondent had no opportunity to call the attention of the same to the said United States Attorney, or the said Assistant United States

Attorney, nor was he apprised himself until said writ and order for enlargement upon bail had been served upon him.

Third. That upon the 18th day of October, A. D. 1913, the petitioner was arrested under and by virtue or a warrant from the Acting Secretary of Labor, directed to respondent, requiring him to arrest and bring before himself for hearing, the said petitioner, upon the charge of having been found receiving, sharing in or deriving benefit from a part or the whole of the earnings of a prostitute; a copy of which is hereto attached and made a part hereof; that about eleven o'clock A. M. of said 18th day of October, A. D. 1913, one Ching Shai, who verifies the petition for the writ of habeas corpus in this cause, and who signed the same as next friend for the petitioner, appeared at the office of the respondent, with other Chinese, and stated that he wished to give bond for Ching Lum, Siu Joy and Wong Yuen; that the said Ching Shai was then informed by the respondent that these men had been arrested because they had property rented to prostitutes, and that they received benefits therefrom; that they would be given a hearing on the Monday following, and then would be entitled to have counsel at further hearings, and would be released upon satisfactory bond, and that if possible the bond would be given on Monday afternoon, or Tuesday. That later in the day of the 18th day of October, 1913, and during the noon hour of said day, a person whom respondent afterwards learned to be Mr. Ulrich, appeared at the office of respondent, and stated that he was from the office of Thompson,

Wilder, Watson and Lymer, and asked to see the said Sui Joy, Ching Lum and Wong [28] Yuen, and asked why they were held; and that he was then informed that the said parties were taken into custody for the violation of section 3 of the Immigration Act, and that they were not permitted to have counsel until after a hearing had been given.

Fourth. Respondent admits that the said Sui Joy is a citizen of the Republic of China, and that he has been for many years last past a resident of the Territory of Hawaii.

Fifth. Answering paragraph five of said petition, respondent says that he did decline to enlarge the said Siu Joy at the time upon any bond, stating as a reason for said declination, that the petitioner was held for a hearing upon the charge of violation of section 3 of the Immigration Act, and was not entitled to be enlarged upon bail until such further time as in his discretion a hearing could be had and bail be allowed.

Sixth. The respondent denies paragraphs four, five and six of said petition, and says in reply to paragraph eight of said petition, that he specifically informed both the petitioner and the said representative of the firm of Thompson, Wilder, Watson and Lymer, that at such stage of the hearing as the officer before whom the hearing should be held, should deem proper, the petitioner might, if he so desired, be represented by counsel.

Seventh. That the writ of habeas corpus based upon the petition herein, was issued before a reasonable time had elapsed or could elapse, for a hearing,

as provided by law, and that the detention of the petitioner at said time was not unlawful, but on the contrary was lawful and within the rights and duties of [29] the respondent, and was made pursuant to a law of the Congress of the United States of America, and the rules of the Department of Labor based thereon, and the detention so provided for.

Eighth. That said petition does not in any way state the facts, or show whether or not petitioner was unlawfully held by respondent, nor are any facts stated or pretended to be stated in said petition setting forth or showing that the petitioner was unlawfully restrained of his liberty.

Ninth. That this Court had no jurisdiction over said cause, because said matter, and the subject thereof, was and is left entirely in the hands of the Secretary of Labor by the laws of the United States, in whom alone, at said time, was vested the authority to inquire into the fact as to whether said alien petitioner was subject to arrest and deportation, and because the determination of that fact was vested alone by law in the Secretary of Labor, and that until a hearing should be had, and the full record of such hearing forwarded to the Bureau of Labor, together with any written argument submitted by the counsel for the petitioner, as provided by law, and the rules of the Department, this Court had no jurisdiction.

Tenth. That the issuance of said writ, and order for enlargement upon bail, before said hearing as provided by law, was without the jurisdiction of this Court, and if a pretended hearing of the facts in said matter involved should be attempted to be had by this

Court, it would be an exercise of functions of both the executive and legislative branches of the government of the United States by the judiciary department thereof, and in contravention of the principles of the Constitution of the United States. [30]

Eleventh. That the respondent denies all further allegations and averments of said petition necessary to be denied, and not herein specifically denied.

Twelfth. That attached to this return, and made a part hereof, are the affidavits of Richard L. Halsey, Harry B. Brown, Manuel Rawlins and Moses Kauwe.

WHEREFORE, respondent prays that the writ may be discharged, the petition dismissed, and the petitioner remanded to the custody whence he came, and that such other and further relief may be had to which respondent may be entitled in the premises; and that the petitioner be required to pay the costs herein.

(Sgd.) RICHARD L. HALSEY.
(Sgd.) C. C. BITTING,
Assistant U. S. Attorney.

Dated this 28th day of October, A. D. 1913. [31]

Cablegram, October 17, 1913, Acting Secretary to Immigration, Honolulu.

(Copy of Cablegram.)

"VIA COMMERCIAL PACIFIC."

2.5PM BDN Oct 17 1913.

37 USG WASHINGTON DC 25

IMMIGRATION HONOLULU

ARROW CHING LUM SIU JOY CHUN PIN WONG YUEN KWANJIRO HARUTA RECEIPTOR HATSUME HARUTA AND TOKU SAKAI PROGNOSIS.

LOUIS Y. POST,
ACTING SECRETARY.

TRANSLATION: (ARROW) ARREST FOLLOWING NAMED ALIEN (S) AND BRING BEFORE YOURSELF FOR HEARING, FORWARDING RECORD OF PROCEEDINGS TO THE DEPARTMENT.

(RECEIPTOR) ALIEN FOUND RECEIVING, SHARING IN, OR DERIVING BENEFIT FROM A PART OR THE WHOLE OF THE EARNINGS OF A PROSTITUTE.

(PROGNOSIS) ALIEN FOUND PRACTICING PROSTITUTION AFTER ENTRY. [32]

Affidavit of Richard L. Halsey.

Territory of Hawaii,
City and County of Honolulu,—ss.

Richard L. Halsey, being first duly sworn on his oath, deposes and says:

That I am a citizen of the United States and a

resident of Honolulu, Territory of Hawaii; that I have been a resident of Honolulu, Territory of Hawaii, since November 13, 1903; that I am Inspector-in-charge of the United States Immigration Service, District of Hawaii, and have been for more than a year last past; that upon the 18th day of October, 1913, at about 11:00 A. M., Mr. Ching Shai appeared at my office, with other Chinese, and stated that he wished to give bond for Mr. Ching Lum, Siu Joy and Wong Yuen. I informed Mr. Ching Shai that these men had been arrested because they had property rented to prostitutes, and that they received benefits therefrom, which was against the law; that they would be given a hearing on Monday following, and that they would be entitled to have counsel at further hearings, and would be released upon satisfactory bond. That, if possible, the bond would be given on Monday afternoon or Tuesday; that it would be necessary to specify in the bond the property or sureties, clearly designating the same, and as to value, and whether any incumbrances were on same. Later, during the noon hour, a man, who I have since learned was a Mr. Ulrich, appeared at my office and stated that he was from the office of Thompson, Wilder, Watson & Lymer, and asked to see Ching Lum, Siu Joy and Wong Yuen, and asked why they were held. I informed him that they were taken into custody for violation of Section 3 of the Immigration Act, that they were not permitted to have counsel until after a hearing had been given.

(Sgd.) RICHARD L. HALSEY.

Subscribed and sworn to before me this 25th day of October, A. D. 1913.

[Seal] (Sgd.) CHAS. L. SEYBOLT,
Notary Public, 1st Judicial Circuit, Territory of Hawaii. **[33]**

Affidavit of Harry B. Brown.

Territory of Hawaii,
City and County of Honolulu,—ss.

Harry B. Brown, being first duly sworn on his oath, deposes and says:

That I am a citizen of the United States and a resident of Honolulu, Territory of Hawaii, and an Immigrant and Acting Chinese Inspector in the United States Immigration Service. That on October 18th, 1913, Richard L. Halsey, Inspector-in-charge, United States Immigration Service for the District of Hawaii, gave me a telegraphic warrant to serve on four Chinese. This warrant charged them with receiving, sharing in, and deriving benefit from the earnings of a prostitute or prostitutes. The names of the Chinese were Ching Lum, Siu Joy, Wong Yuen and Chun Pin. About 10:30 A. M., Mr. Ching Lum was found in the clubrooms at Palama Junction, and the warrant was then and there served on him and he was told the charges against him. He said that he did not own the houses at the present but that he had turned them over to his son. I specifically told him that he was charged in the warrant with receiving, sharing in, or deriving benefit from the earning or earnings of a prostitute or prostitutes, as he was the owner of some houses in

Iwilei which were used for the purposes of prostitution, and that his bail would be $1,000, and that it would be necessary for him to have two sureties, each quaalifying double the amount of the bond, and that they must qualify upon real estate. He then asked permission to telephone a friend, and, I believe, mentioned the name of Ching Shai. He then went to another room where I supposed he telephoned to this friend, for he was gone three or four minutes, and when he returned I asked him if he had gotten his friend and he said that everything was all right. I then left Mr. Manuel Rawlins in charge of Mr. Ching Lum and went downstars to the Yee Shum Kee store where Mr. Wong Yuen was located and I there served the warrant on him, telling him that he was arrested on the warrant which charged him with receiving, sharing in, or deriving benefit from the earnings of a prostitute or prostitutes. Mr. Wong Yuen then got **[34]** into a hack with Mr. Rawlins and Mr. Ching Lum, and I got into another hack and went to the Market Hardware Store, which is near the fish market, where I found Mr. Siu Joy. I told Mr. Sui Joy that he was placed under arrest and charged with receiving, sharing in, or deriving benefit from the earnings of a prostitute or prostitutes. I then took Mr. Siu Joy in the hack with me and, in company with the other hack in which were Mr. Rawlins, Mr. Wong Yuen and Mr. Ching Lum, we proceeded to the U. S. Immigration Station. We arrived there at about 11:00 A. M., Oct. 18, 1913, Mr. Ching Shai was waiting in the Immigration Office when we arrived.

After placing the men in detention Mr. Rawlins and myself went out to look for the other person named in the telegraphic warrant, Mr. Chun Pin, but he was not found at his residence. We then went to Iwilei in search for Mr. Chun Pin but we were unable to locate him. We then returned to the Immigration Station. On our return, just opposite the U. S. Naval Station, we met two hacks in which there were Chinese. This a few moments after twelve o'clock noon. Mr. Ching Shai was in one of these hacks, stopped the hack, and spoke to me. Mr. Ching Shai asked about bonds and I told him that Mr. Halsey was in charge of that. Nothing was said to Mr. Ching Shai or any member of his party as to why these Chinese were arrested, or why they were detained, nor did Mr. Ching Shai ask for such information. I told Mr. Ching Shai that they would be given a hearing Monday morning, and that bonds would then be arranged. I remember of telling him that it would take some little time to get bonds approved, as the inspector-in-charge had to examine into the solvency of the bonds, and after that the bonds would have to be approved by the U. S. District Attorney or his assistant as to form and execution; that the bonds would then be returned to the Immigration Office and the people released.

(Sgd.) HARRY B. BROWN.

Subscribed and sworn before me this 27th day of October, 1913.

[Seal] (Sgd.) P. H. BURNETTE,
Notary Public, in and for the First Judicial Circuit, Territory of Hawaii. **[35]**

Affidavit of Manuel Rawlins.

Territory of Hawaii,
City and County of Honolulu,—ss.

Manuel Rawlins, being first duly sworn on his oath, deposes and says:

That I am a citizen of the United States and a resident of Honolulu, Territory of Hawaii, and an employee in the United States Immigration Service. That on October 18, 1913, I was detailed to accompany Inspector Harry B. Brown to make arrests of certain Chinese. First we went to the residence of Mr. Ching Lum, in a lane off Beretania Street, near Palama Junction. Mr. Ching Lum was not there, and we then went to the clubroom on the third floor of a building at Palama Junction, where we found Mr. Ching Lum. Mr. Brown told him that he was arrested in accordance with a warrant from the Acting Secretary of the Department of Labor, and that he was charged with being the owner of some houses in Iwilei which were used for prostitution, and that he was deriving benefit from such prostitution. Mr. Ching Lum immediately said that he had turned those houses over to his son. Mr. Ching Lum then asked Mr. Brown for the privilege of going to the telephone to see about bondsmen. Previously Mr. Brown had told Mr. Ching Lum that the bond in the case would be in the sum of $1,000. Mr. Ching Lum went to the telephone alone and was gone some length of time, probably three or four minutes. When he returned he said he was ready. We then went to a store near to this building, where Mr.

Wong Yuen was taken into custody. He came in the hack with Mr. Ching Lum and myself, while Mr. Brown went in another hack to the hardware store near the Fish Market, where another Chinese was taken into custody. The entire party then came to the Immigration Station. This was about 11 A. M. After putting the Chinese in detention, Mr. Brown and myself got into a hack and went to Palama, to the residence of Mr. Chun Pin. He was not to be found. We were then returning to the Immigration Station, and when about opposite the Naval Station, a few minutes after 12 noon, we met two hacks with Chinese in them, going toward town, they stopped and spoke to Mr. Brown about getting Ching Lum and the others out on bond. Mr. Brown told them they would have to see Mr. Halsey about getting bonds; they said that they had seen Mr. Halsey, and Mr. Brown told them that nothing could be done until Monday morning, when he would give them a hearing, and then bonds could be arranged for.

(Sgd.) MANUEL RAWLINS.

Subscribed and sworn to before me this 27th day of October, 1913.

[Seal] (Sgd.) P. H. BURNETTE,
Notary Public in and for the First Judicial Circuit, Territory of Hawaii. **[36]**

Affidavit of Moses Kauwe.

Territory of Hawaii,
City and County of Honolulu,—ss.

Moses Kauwe, being first duly sworn on his oath, deposes and says:

That I am a citizen of the United States and a resident of Honolulu, Territory of Hawaii, and an employee in the United States Immigration Service. That I was at my desk on the 18th day of October, 1913, and at about eleven o'clock A. M., Mr. Ching Shai, and some other Chinese, came into the office and Mr. Ching Shai, stated to Mr. Richard L. Halsey that he wished to give bond for Mr. Ching Lum, Siu Joy, and Wong Yuen, and Mr. Halsey told him that the men had been arrested because they rented houses in Iwilei in which there were prostitutes, and that they derived benefit from renting the houses, and that this was against the law. Mr. Halsey told Mr. Ching Chai that Ching Lum Sui Joy and Wong Yuen, would be given a hearing the following Monday and explained to him how after that a bond could be made out for their release.

(Sgd.) MOSES KAUWE.

Subscribed and sworn to before me this 25th day of October, 1913.

[Seal] (Sgd.) DAVIS L. PETERSON,
Notary Public First Judicial Circuit, Territory of Hawaii.

[Endorsed]: No. 75. (Title of Court and Cause.) Return of Richard L. Halsey. Filed Oct. 28, 1913. A. E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. **[37]**

Order Continuing Hearing to October 31, 1913.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Thursday, October 30, 1913, Vol. 8, page 674.

(Title of Court and Cause.)

On this day came Mr. A. A. Wilder of the firm of Thompson, Wilder, Watson & Lymer, counsel for the above petitioner, and also came Mr. R. L. Halsey, the respondent herein, in person and with Mr. C. C. Bitting, Assistant United States Attorney, and this cause was called for hearing on respondent's return. Thereupon on motion of Mr. Wilder and consent of Mr. Bitting, it was by the Court ordered that this cause be continued to October 31, 1913, at 2 o'clock P. M., for hearing on said return. **[38]**

Order Continuing Hearing.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Friday, October 31, 1913, Vol. 8, page 675.

(Title of Court and Cause.)

On this day came Mr. C. C. Bitting, Assistant United States Attorney, on behalf of the respondent herein, neither the above petitioner or his counsel being present, and this cause was called for hearing on respondent's return. Thereupon it was by the Court ordered that this cause be continued until called up for hearing on said return. **[39]**

Order of Submission of Demurrer to Return to Writ of Habeas Corpus.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Monday, December 1, 1913, Vol. 8, Page 708.

(Title of Court and Cause.)

On this day came Messrs. A. A. Wilder and B. S. Ulrich, of the firm of Thompson, Wilder, Watson & Lymer, counsel for the above petitioner, and also came Mr. C. C. Bitting, Assistant United States Attorney, on behalf of the respondent, and this cause was called for hearing on respondent's return. Thereupon a demurrer to the return of the respondent was filed and due argument having been had thereon by respective counsel, the said matter was by the Court taken under advisement and counsel ordered to file their briefs thereon. **[40]**

In the District Court of the United States, in and for the District and Territory of Hawaii.

In the Matter of the Application of SUI JOY for a Writ of Habeas Corpus.

Demurrer to the Return.

Comes now Ching Shai as the next friend of Sui Joy, petitioner herein, by his attorneys, Thompson, Wilder, Watson & Lymer, and demurs to the return filed herein and for grounds of demurrer alleges as follows:

First: That the said return does not set forth facts which would justify the holding of the said Sui Joy.

Second: That the said return does not show that any application setting forth the facts was made by the proper immigration authorities for a warrant of arrest as is required by law, nor indeed, that any application at all was made for a warrant for the arrest of the said Sui Joy.

Third: That the alleged warrant of arrest does not make sufficiently definite and certain the nature of the charge against the said Sui Joy.

Fourth: That it does not appear in the said return that the said Sui Joy was permitted to be released from custody upon the furnishing of a satisfactory bond as is expressly required in the said warrant of arrest and as is provided for by law.

Fifth: That it does not appear in the said return that the said Sui Joy is an alien who has ever "entered the United States" within the meaning of the law herein provided.

Sixth: That it appears in the said return that the said Sui Joy was deprived of his liberty without due process of law, contrary to Article 5 of the amendments of the constitution of the United States.

THOMPSON, WILDER, WATSON & LYMER,

Attorneys for Petitioner.

By (Sgd.) B. S. U.

Dated, Honolulu, Dec. 1st, A. D. 1913. [41]

[Endorsed]: No. 75. (Title of Court and Cause.) Demurrer to the Return. Filed Dec. 1, 1913. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. [42]

Order of Submission of March 16, 1914.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Monday, March 16, 1914, Vol. 9, Page 74.

(Title of Court and Cause.)

On this day came Mr. A. A. Wilder, of the firm of Thompson, Wilder, Watson & Lymer, counsel for the above applicant, and also came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, and this cause was called for hearing. Thereupon and after due argument the said cause was by the Court taken under advisement and counsel herein ordered to file briefs. [43]

Order Extending Time to January 4, 1915, for Filing of Reply Brief of Respondent.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Tuesday, December 1, 1914, Vol. 9, Page 400.

(Title of Court and Cause.)

On this day the Court ordered that the respondent herein be given until January 4, 1915, within which to file its reply brief herein. [44]

Order Continuing Argument to January 30, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Tuesday, January 5, 1915, Vol. 9, Page 448.

(Title of Court and Cause.)

On this day came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, neither the above applicant or his counsel being present, and this cause was called to be set for hearing. Thereupon it was by the Court ordered that this cause be continued to January 30, 1915, at 10 o'clock A. M., for argument. **[45]**

Order Continuing Argument to February 6, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Saturday, January 30, 1915, Vol. 9, Page 482.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or his counsel being present, and this cause was called for argument. Thereupon on motion of Mr. McCarn, it was by the Court ordered that this cause be continued to February 6, 1915, at 10 o'clock A. M., for said argument. **[46]**

Order Continuing Argument to February 13, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Saturday, February 6, 1915, Vol. 9, Page 496.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or his counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to February 13, 1915, at 10 o'clock A. M., for argument. [47]

Order Continuing Argument to February 27, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Saturday, February 13, 1915, Vol. 9, Page 509.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or his counsel being present, and this cause was called for argument. Thereupon on motion of Mr. McCarn, it was by the Court ordered that this cause be continued to February 27, 1915, at 10 o'clock A. M., for argument. [48]

Order Continuing Argument to March 6, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Friday, February 26, 1915, Vol. 9, Page 525.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, whereupon it appearing to the Court, that the above cause had been heretofore continued to February 27, 1915, at 10 o'clock A. M., for argument, it was by the Court ordered that the said cause be continued to March 6, 1915, at 10 o'clock A. M., for such argument. [49]

Order Continuing Argument to March 13, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Saturday, March 6, 1915, Vol. 9, Page 536.

(Title of Court and Cause.)

The within cause being called on this day for argument and none of counsel for resptive parties being present, it was by the Court ordered that this cause be continued to March 13, 1915, at 10 o'clock A. M., for argument. [50]

Order Continuing Argument to April 10, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Saturday, March 13, 1915, Vol. 9, Page 544.

(Title of Court and Cause.)

On this day came Mr. J. W. Thompson, Assistant United States Attorney, neither the above applicant or his counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to April 10, 1915, at 10 o'clock A. M., for argument. **[51]**

Order Continuing Argument to April 24, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Saturday, April 10, 1915, Vol. 9, Page 568.

(Title of Court and Cause.)

The within cause being called on this day for argument and none of counsel for the respective parties being present, it was by the Court ordered that this cause be continued to April 24, 1915, at 10 o'clock A. M., for argument. **[52]**

Order Continuing Argument to May 8, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Saturday, April 24, 1915, Vol. 9, Page 606.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or his counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to May 8, 1915, at 10 o'clock A. M., for argument. [53]

Order Continuing Argument to May 22, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Saturday, May 8, 1915, Vol. 9, Page 646.

(Title of Court and Cause.)

On this day came Mr. W. T. Carden of the firm of Thompson and Milverton, counsel for the above applicant, and also came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to May 22, 1915, at 10 o'clock A. M., for argument. [54]

Order Continuing Argument to May 28, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Saturday, May 22, 1915, Vol. 9, Page 669.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or his counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to May 28, 1915, at 2 o'clock P. M,. for argument. [55]

Order of Submission of May 28, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Friday, May 28, 1915, Vol. 9, Page 677.

(Title of Court and Cause.)

On this day came Mr. A. A. Wilder on behalf of the above applicant and also came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, and this cause was called for argument. Thereupon and after due argument by respective counsel, the Court ordered that the matters herein be submitted on briefs. [56]

Order Sustaining Demurrer to Return to Writ of Habeas Corpus.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Monday, August 2, 1915, Vol. 9, Page 739.

(Title of Court and Cause.)

On this day came Mr. F. E. Thompson and Mr. A. A. Wilder, counsel for the above applicant and also came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, and this cause was called for decision. Thereupon the Court read and filed its decision herein sustaining the demurrer of said applicant to respondent's return and allowing the respondent until August 3, 1915, at 10 o'clock A. M., to contest petitioner's allegation of residence in Hawaii. [57]

In the United States District Court for the Territory of Hawaii.

April, A. D. 1915, Term.

No. 75.

In the Matter of the Application of SUI JOY for a Writ of Habeas Corpus.
(Also WONG YUEN, No. 74.)
(Also CHING LUM, No. 73.)
(Also KIMI YAMAMOTO, No. 91.)

Opinion on Demurrer to Return to Petition for Writ of Habeas Corpus.

August 2, 1915.

Immigration — Deportation — Entering the United States: An alien who came to the Hawaiian Islands previous to their annexation to the United States, and was living there at the time of such annexation, cannot be said to "have entered the United States" within the meaning of section 3 of the act of February 20, 1907, as amended by the act of March 26, 1910, 36 Stat. 263.

Same — Same — Same — Actual landing subject to statutory conditions: The provisions of the said statute for the deportation of aliens found "to be unlawfully within the United States," presume an actual landing of such aliens, subject to the conditions as to conduct set forth in the statute.

Habeas Corpus: On demurrer to return.

THOMPSON, WILDER WATSON & LYMER, for Petitioners Sui Joy, Wong Yuen and Ching Lum.

J. W. CATHCART, for Petitioner Kimi Yamamoto.

JEFF McCARN, United States District Attorney, for Respondent. [58]

In the first three of the above cases demurrers to the petitions were overruled, whereupon the respondent filed his returns which were demurred to by the

petitioners, the fifth ground of demurrer being as follows: "That it does not appear in the said return that the said Sui Joy is an alien who has ever entered the United States, within the meaning of the law herein provided." In the fourth case, the petitioner filed a traverse to the return of the respondent, in which, among other things, she raised the same point as raised on the fifth ground of the said demurrers, to wit, that she was not subject to the immigration laws of the United States, having come to the Hawaiian Islands while they were under the jurisdiction of the Republic of Hawaii.

The argument on this point is, briefly, that the petitioners, having come to the Hawaiian Islands previous to annexation, as alleged, and being domiciled residents here at the time of annexation, the statute does not apply to them, such persons, although aliens, not having "entered" the United States.

The following is the immigration rule applying to these cases:

> "The application must state facts bringing the alien within one or more of the classes subject to deportation after entry. The proof of these facts should be the best that can be obtained. The application must be accompanied by a certificate of landing (to be obtained from the immigration officer in charge at the port where landing occurred), or a reason given for its absence, in which case effort should be made to supply the principal items of information mentioned in the blank form provided for such cer-

tificates. Telegraphic application may be resorted to only in case of necessity and must state (1) that the usual written application has been made and forwarded by mail, and (2) the substance of the facts and proof therein contained." Immigration Rule 22, subdivision 2. [59]

The statute under which the petitioners are held is a part of section 3 of the act of February 20, 1907, as amended by the act of March 26, 1910, 36 Stat. 263. It is as follows:

> "Any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution *after such alien shall have entered the United States,* or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute, or who is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists, protects, or promises to protect from arrest any prostitute, shall be deemed to be unlawfully within the United States and shall be deported in the manner provided by sections 20 and 21 of this act."

The demurrers are allowed on the fifth ground. It is obvious from a reading of division 2 of Immigration Rule 22, above quoted, that the commissioner general of immigration and the secretary of labor, who are authorized by the immigration act of February 20, 1907, 34 Stat. 898, sec. 22, to establish rules for carrying out the provisions of the act, have con-

strued the act on the point referred to, as meaning an actual entry or landing in the United States. The said division 2 of the 22d rule, in providing for an application by the immigration officers to the secretary of labor for authority to arrest an alien suspected of being unlawfully in the United States, requires, among other things, that the application "shall be accompanied by a certificate of landing (to be obtained from the immigration officer in charge at the port where the landing occurred) or a reason given for its absence." Of course this can refer to nothing else than an actual landing in the United States. This construction is rendered still more positive by the "certificate of landing," required by the rule to accompany the application. The blank form provided by the secretary of labor and the commissioner [60] general of immigration under the authority of the statute, is as follows:

"Form 564.

Certificate as to Landing of Alien.

(To accompany application for warrant of arrest.)

DEPARTMENT OF COMMERCE AND LABOR.

Immigration Service.

————, 190—.

I hereby certify that I have examined the records of the immigrant station at —— with reference to the record of the landing or entry of ——, an alien, and that the following facts relative to such landing or entry are disclosed by said records:

(1) Name of alien, ——; age, ——; sex, ——.

(2) Race, ——; country whence alien came, ——.

(3) Exact date and port of arrival in the United States, ——.

(4) Name of vessel and line, ——————.

(If alien arrived via Canada or Mexico, so state.)

(5) Destination, ——.

(6) Occupation, ——; money brought, $——.

(7) By whom passage paid, ——.

(8) Whether ever in United States before, ——.

(9) Whether inspected at time of arrival, ————

———————————————

(If held for special inquiry, so state.)

Remarks: ——————

(Signature) ——————,

(Official title) ——————."

Such construction, being authoritative and official, is entitled to great weight. Endlich's Interpretation of Statutes, s. 357.

Counsel in the Sui Joy, Ching Lum and Wong Yuen cases, set forth somewhat exhaustively the constitutional argument that Congress derived its power to legislate as to immigrant aliens after being admitted, solely from section 8 of the first article of the Constitution of the United States, which gives it the power "to regulate commerce with foreign nations." Quoting from the brief, "the [61] theory is that commerce with foreign nations includes not only an exchange of commodities, but also the importation or incoming of passengers. The proposition that Congress has no power to regulate the affairs of individual persons in the United States except as incidental to some one of the powers ex-

pressly given to it by the Constitution, is fundamental." It follows therefore that whereas Congress may permit an alien immigrant to land under certain conditions as to conduct thereafter while in the country, involving forcible deportation upon his failure to conform to such conditions, it may not deport alien residents for similar conduct, with whom there has been no such conditional entry into the United States. In other words, an alien resident of the United States in regard to whom there was no condition as to his conduct during his residence, that was made the basis of his landing or entry into the country by a then existing statute, is not within the scope of section 3 of the immigration act of February 20, 1907, as amended by the act of March 26, 1910. Plainly the law does not affect persons who have not *entered* the United States previous to doing the acts charged. These petitioners all claim to have been living in Hawaii before and at the time of annexation. In matters of immigration the word *enter* has not acquired a technical meaning. It would appear that these cases might well have been disposed of on their inception, on the ground that the statute is too clear to require interpretation. "*Absoluta sententia expositore indiget*" Potter's Dwarris, 128; Vattel's first rule, id. 126.

As the ruling on this ground of the demurrer disposes of the cases, the Court need not consider the [62] other grounds.

It is not clear whether there remains a question of fact to be decided. The returns in the first three cases do not specifically deny the allegations of resi-

dence in Hawaii before annexation, but make a general denial of all further allegations and averments of said petitions necessary to be denied. The return in the fourth case accepts the allegation of the petition in that case that the petitioner arrived in Hawaii in the year 1897, as correct. She (Kimi Yamamoto) is, therefore, under the foregoing conclusions, entitled to her discharge under the writ, which is hereby ordered.

If the respondent desires to contest the allegations of residence in Hawaii, in the three first cases, an opportunity will be given, otherwise such petitioners will be discharged.

(Sgd.) SANFORD B. DOLE,
Judge of the United States District Court for the Territory of Hawaii. [63]

Supplementary Decision.

On the afternoon of the day the foregoing decision was given in open court, counsel on both sides filed the following stipulation:

> "It is hereby stipulated and agreed by and between the United States of America through J. W. Thompson, its Assistant District Attorney of the District and Territory of Hawaii, and Sui Joy, Ching Lum and Wong Yuen, by their attorneys, Thompson & Milverton, that each of said petitioners were residents of the Hawaiian Islands for a period of more than five (5) years prior to the 15th day of June, A. D. 1900."

By which stipulation it would appear that the said petitioners were resident here for over three years before the annexation of Hawaii to the United States,

which took place August 12, 1898. The Court was thereupon prepared to order the discharge of the petitioners, according to the conclusions of the foregoing decision, but before such order was effectuated the assistant district attorney, acting for the respondent, moved the Court for an opportunity of showing that the petitioners severally visited China after annexation and returned again to Hawaii.

Such motion must be denied, inasmuch as the cases contain no pleadings which would form a basis for such testimony,—as there is no showing that such information is newly discovered and as such information, if it exists, obviously has been, during the pendency of these proceedings, within the reach of the respondent.

The writs are made absolute and the petitioners discharged.

Honolulu, T. H., August 4, 1915.

(Sgd.) SANFORD B. DOLE,
Judge of the United States District Court for the Territory of Hawaii. [64]

[Endorsed]: No. 75. (Title of Court and Cause.) Decision of Dole, J., on Demurrer to Return. Filed August 2, 1915. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk, and Supplementary Decision. Filed August 9, 1915. A. E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. [65]

Order Continuing Cause to August 4, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Tuesday, August 3, 1915, Vol. 9, Page 741.

(Title of Court and Cause.)

On this day came Mr. F. E. Thompson, of the firm of Thompson and Milverton, counsel for the above applicant, and also came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, and this cause was called for further disposition. Thereupon it was by the Court ordered that this cause be continued to August 4, 1915, at 10 o'clock A. M., for further disposition. [66]

Order Discharging Petitioner.

(PROCEEDINGS AT SUPPLEMENTARY DECISION, ORDERING PETITIONER DISCHARGED UNDER WRIT HEREIN.)

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Wednesday, August 4, 1915, Vol. 9, Page 743.

(Title of Court and Cause.)

On this day came Mr. F. E. Thompson, of the firm of Thompson and Milverton, counsel for the above applicant, and also came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, and this cause was called for further disposition. Thereupon it appearing from the stipu-

lation of counsel that the within applicant was a resident of the Hawaiian Islands for the period of more than five (5) years prior to the 15th day of June, A. D. 1900, it was by the Court ordered that said applicant be discharged under the writ herein. [67]

In the United States District Court for the Territory of Hawaii.

October, A. D. 1915, Term.

No. 75.

In the Matter of the Application of SUI JOY for a Writ of Habeas Corpus.

Judgment.

At the regular April, A. D. 1915, term of the District Court of the United States in and for the District and Territory of Hawaii, held in the courtroom of said Court, City and County of Honolulu, in the Territory of Hawaii and the District aforesaid, on the 2d day of August, 1915, the above-entitled matter having heretofore been heard on the pleadings, evidence adduced before the Court, and argument of counsel for the respective parties, and due deliberation thereon, the Court finds that the above-named petitioner Sui Joy is entitled to be discharged, subject to the taking of an appeal by the respondent herein, Richard L. Halsey, in which case the said applicant Sui Joy will be required to give recognizance, with surety in the sum of $500.00 to answer the judgment of the appellate court.

NOW, THEREFORE, it is hereby ordered, adjudged and decreed that the above-named petitioner

Sui Joy be, and he is hereby discharged from custody herein, subject to the taking of an appeal, and subject to exception by the United States of America.

And the Court being advised that the above-entitled cause will be removed to the appellate court by the proper proceedings to be had in that behalf, does hereby [68] further order, adjudge and declare that the above-named Sui Joy give his recognizance with surety in the sum and amount of $500.00, to answer the judgment of the appellate court.

Given, made and dated at Honolulu, Territory and District aforesaid, this 16th day of December, A. D. 1915.

(Sgd.) SANFORD B. DOLE,
Judge U. S. District Court.

[Endorsed]: No. 75. (Title of Court and Cause.) Judgment entered in J. D., Book 2, at folio #656. Filed Dec. 16, 1915. F. L. Davis, Clerk. By (Sgd.) Ray B. Rietow, Deputy Clerk. [69]

In the United States District Court for the Territory of Hawaii.

In the Matter of the Petition of SUI JOY for a Writ of Habeas Corpus.

Petition for Appeal.

To the Honorable CHARLES F. CLEMONS, Judge of the Above-entitled Court:

The United States of America, by its attorney, Horace W. Vaughan, conceiving itself aggrieved by the order and judgment made and entered on the

16th day of December, A. D. 1915, in the above-entitled proceeding, does hereby appeal from the said order and judgment to the Circuit Court of Appeals for the Ninth Circuit, and files herewith its assignment of errors intended to be urged upon appeal, and it prays that its appeal may be allowed, and that a transcript of the record of all proceedings and papers upon which said order and judgment was made, duly authenticated, may be sent to the Circuit Court of Appeals for the Ninth Circuit of the United States.

Dated this 31 day of January, A. D. 1916.

(Sgd.) HORACE W. VAUGHAN,
United States Attorney.

Received a copy of the above petition:

_____,

By His Attorneys,

_____. [70]

[Endorsed]: No. 75. (Title of Court and Cause.) Petition for Appeal. Filed Feb. 15th, 1916. (Sgd.) F. L. Davis, Clerk. [71]

In the United States District Court for the Territory of Hawaii.

In the Matter of the Petition of SUI JOY for a Writ of Habeas Corpus.

Order Allowing Appeal.

Upon application and motion of Horace W. Vaughan, United States Attorney for the District and Territory of Hawaii:

IT IS HEREBY ORDERED, that the petition for appeal, heretofore filed herein by the United States of America, be, and the same is hereby granted; and that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final order and judgment heretofore, on December 16th, 1915, filed and entered herein, be and the same is hereby allowed, and that a transcript of the record of all proceedings and papers upon which said final order and judgment was made, duly certified and authenticated, be transmitted, under the hand and seal of the clerk of this court, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit of the United States at San Francisco, in the State of California.

Dated this 31st day of January, A. D. 1916.

(Sgd.) CHAS. F. CLEMONS,
Judge U. S. District Court.

Received a copy of the above order:

_____,

By His Attorneys,

_____. [72]

[Endorsed]: No. 75. (Title of Court and Cause.) Order Allowing Appeal. Filed February 15th, 1916, (Sgd.) F. L. Davis, Clerk. [73]

In the United States District Court for the Territory of Hawaii.

In the Matter of the Petition of SUI JOY for a Writ of Habeas Corpus.

Assignment of Errors.

And now comes the United States of America, by Horace W. Vaughan, its attorney, and says that in the record and proceedings in the above-entitled matter there is a manifest error, and that the final record and judgment made and entered in said matter on the 16th day of December, A. D. 1915, is erroneous and against the just rights of the said United States, in this, to wit:

I.

That the Court erred in assuming jurisdiction in this matter because it appears by the petition and record presented, that the writ was improperly issued.

II.

That because the rule of this court and the practice and rules of the Supreme Court of the United States and of the Circuit Court of Appeals for the Ninth Circuit require that in matters of this kind a copy of the record upon which the warrants for deportation were issued, should accompany the petition, and that no such record was attached to the petition for the writ of habeas corpus, and by reason thereof, the said writ was improvidently and improperly issued. [74]

III.

That because the rule of court in this jurisdiction requires that the office of United States Attorney shall have notice of the application for a writ of habeas corpus one hour preceding the application therefor, and no such notice was served upon the United States Attorney or his assistant, or in said

office; that therefore the writ was issued in violation of the rule of this court.

IV.

That the record as presented shows, from all the testimony adduced, that the petitioner was deriving benefit from the earnings of a prostitute, and that the finding thereon was conclusive upon this court and the court had no jurisdiction to inquire further into the facts of the case.

V.

That the Court erred in holding that because the petitioner, who was admitted to be an alien, and a citizen of the Republic of China, was without the Immigration Laws of the United States prohibiting the entrance of aliens, by reason of the fact that the petitioner had previously been a resident of the Kingdom or Republic of Hawaii and before the annexation of Hawaii to the United States or the taking effect of the Organic Act providing for the Territory of Hawaii.

VI.

That the Court erred in holding that because the petitioner had become a resident of Hawaii before the annexation of Hawaii to the United States, therefore petitioner did not come within the rules as prescribed by the statute against the entry of an alien found to be deriving benefit from the earnings of a prostitute. [75]

VII.

That the Court erred in refusing to hold that although the petitioner was admittedly an alien and a citizen of the Republic of China, the petitioner

was not amenable to the prohibitive laws of entrance, nor to the deportation laws of the United States.

VIII.

That the Court erred in holding that a Chinese citizen of the Republic of China, although domiciled in the Territory of Hawaii before the annexation thereof to the United States of America, was not amenable to deportation, although proven to be receiving the proceeds of earnings by a prostitute, and that because the petitioner had been in the Territory of Hawaii before annexation, he was privileged, althought an alien and a citizen of the Republic of China, to receive the earnings of a prostitute and not be amenable to the laws of the United States providing for the deportation of an alien so receiving such earnings.

IX.

That in any proceedings upon the hearing, such as was had, the Court was without authority of law and a hearing under said petition and a ruling of the Court made upon such hearing was trenching upon the duties of the executive branch of the Government.

WHEREAS, by the law of the land, the said application for a writ of habeas corpus should have been denied, and the said writ of habeas corpus should have been discharged, and the said applicant and petitioner should have been remanded to be dealt with according to law. [76]

And the aforesaid United States of America now prays that the order and judgment of December 15th, 1915, hereinabove mentioned, may be reversed, annulled, and held for naught, and that it, said United

States, may have such other and further relief as may be proper in the premises.

Dated, this 31 day of January, A. D. 1916.

(Sgd.) HORACE W. VAUGHAN,
United States Attorney.

Received a copy of the above Assignment of Errors:

_____,

By _____,
His Attorneys.

[Endorsed]: No. 75. (Title of Court and Cause.) Assignment of Errors. Filed Feb. 15th, 1916. (Sgd.) F. L. Davis, Clerk. [77]

In the United States District Court for the Territory of Hawaii.

In the Matter of the Application of SUI JOY for a Writ of Habeas Corpus.

Citation on Appeal.

United States of America,—ss.

The President of the United States, to SUI JOY, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an order allowing an appeal, filed in the clerk's office of the United States District Court for the Territory of Hawaii, wherein the United States of America

is appellant, and you, Sui Joy, are appellee, to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNTSS, the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States of America, this —— day of January, A. D. 1916, and the Independence of the United States the one hundred and fortieth.

CHAS. F. CLEMONS,
Judge U. S. District Court.
Attest: F. L. DAVIS,
Clerk U. S. District Court.

Received a copy of the within citation:
_____,
By His Attorneys,
_____. [78]

[Endorsed]: No. 75. In the District Court of the United States for the Territory of Hawaii. In the Matter of the Application of Sui Joy for a Writ of Habeas Corpus. Citation on Appeal. Filed February 15th, 1916. F. L. Davis, Clerk. By ———, Deputy.

In the United States District Court for the Territory of Hawaii.

In the Matter of the Application of SUI JOY for a Writ of Habeas Corpus.

Praecipe for Transcript.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record

in this cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

1. Petition, Order and Writ of Habeas Corpus; filed October 18, 1913.
2. Bond; filed October 18, 1913.
3. Demurrer to Petition; filed October 22, 1913.
4. Decision Overruling Demurrer to Petition; filed October 25, 1913.
5. Return of Richard L. Halsey to Writ of Habeas Corpus; filed October 28, 1913.
6. Demurrer to the Return; filed December 1, 1913.
7. Decision on Demurrer to Return; filed August 2, 1915.
8. Supplementary Decision; filed August 9, 1915.
9. Judgment; filed December 16, 1915.
10. Petition for Appeal; filed February 15th, 1916.
11. Order Allowing Appeal; filed February 15th, 1916.
12. Asignment of Errors; filed February 15, 1916.
13. Citation on Appeal; filed February 15th, 1916.

[79]

14. All Minute Entries in Above-entitled Cause.
15. This Praecipe.

Said transcript to be prepared as required by law and the rules of this Court, and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and filed in the office of the clerk of said Circuit Court of Appeals at San Francisco, before

the 15th day of March, A. D. 1916.

THE UNITED STATES OF AMERICA,
By (Sgd.) HORACE W. VAUGHAN,
United States Attorney.

[Endorsed]: No. 75. (Title of Court and Cause.) Praecipe for Transcript. Filed Feb. 15, 1916. (Sgd.) F. L. Davis, Clerk. [80]

In the District Court of the United States, in and for the District and Territory of Hawaii.

No. 75.

In the Matter of the Petition of SUI JOY, for a Writ of Habeas Corpus.

Certificate of Clerk, U. S. District Court to Transcript of Record.

United States of America,
District of Hawaii,—ss.

I, George R. Clark, Clerk of the District Court of the United States for the Territory of Hawaii, do hereby certify the foregoing pages, numbered 1 to 81, inclusive, to be a true and complete transcript of the record and proceedings had in said court in the matter of the Petition of Sui Joy for a writ of habeas corpus, as the same remains of record and on file in my office, and I further certify that I hereto annex the original citation on appeal and three (3) orders extending time to transmit record on appeal in said cause.

I further certify that the cost of the foregoing transcript of record is $20.75, and that said amount

has been charged by me in my account against the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 23d day of May, A. D. 1916.

[Seal] GEORGE R. CLARK,
Clerk, United States District Court, Territory of Hawaii. [81]

[Endorsed]: No. 2802. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. Sui Joy, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Hawaii.

Filed June 2, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit

NO. 2802

UNITED STATES OF AMERICA,
Appellant.

vs.

SUI JOY,
Appellee.

PETITION FOR REHEARING

E. A. MOTT-SMITH,
W. L. STANLEY,
Counsel for Appellee.

Filed
MAR 3 - 1917

United States Circuit Court of Appeals for the Ninth Circuit.

NO. 2802

UNITED STATES OF AMERICA,
Appellant,
vs.
SUI JOY,
Appellee.

PETITION FOR REHEARING.

The appellee respectfully petitions that a rehearing be granted for the following reasons:—

1. That the court erred in its Opinion filed herein on the 5th day of February, 1917, and the said Opinion was based upon a misconception of the undisputed facts appearing in the record herein, in so far as it remanded the above cause to the District Court of the United States in and for the Territory of Hawaii with instructions to remand the appellee *for deportation*, because it appears from the said record that the said cause came to this court on appeal from the judgment of the said District Court sustaining the appellee's demurrer to the return of the appellant to the appellee's petition for a writ of habeas corpus, which writ was issued upon the arrest

of the appellee by the Immigration officers at Honolulu upon the charge of a violation of Section 3 of the Immigration Act, and before any hearing had been given to the appellee on the charges upon which the arrest was based;

2. That, as appears by the said record, no hearing has up to the date hereof been given to the appellee by the said or any Immigration officers on the charges upon which his arrest was based, and that no determination has been made by the said or any Immigration officers or by any official or officials of the Department of Labor either as to the guilt or innocence of the appellee on the said charge or as to whether the appellee should or should not be deported;

3. That the appellee cannot lawfully be deported until he has been given a hearing by the Immigration officer or officers at Honolulu on the charges upon which his arrest was based, nor until a decision adverse to the appellee has been rendered by the Department of Labor upon the recommendation of the said officer or officers;

4. That the court, we think, overlooked the argument of the appellee that, it being an admitted fact that the appellee was a bona fide resident of the Hawaiian Islands at the time the same were annexed to the United States, the Hawaiian Islands were the country whence the appellee came into the United States; and that as by Sections 20 and 21 of the Immigration Act an alien can lawfully only be deported "to the country whence he came," and the country whence the appellee came to the United States is now

an integral part of the United States, he cannot lawfully be deported therefrom, and there is no country to which he can lawfully be deported. That the effect of sustaining this argument of the appellee would necessarily be the affirmance of the judgment of the District Court.

Dated Honolulu, T. H.,

February 24, 1917.

E. A. MOTT-SMITH,
W. L. STANLEY,
Counsel for Appellee.

I hereby certify that in my opinion there is good ground in law for a rehearing in the above entitled cause, and that this petition is not filed for the purpose of delay.

W. L. STANLEY.

No. 2803

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

KIMI YAMAMOTO,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Territory of Hawaii.

Filed
1918

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

No. 2803

United States

Circuit Court of Appeals

For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

KIMI YAMAMOTO,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Territory of Hawaii.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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Names and Addresses of Attorneys.

For Petitioner, KIMI YAMAMOTO:

THOMPSON, MILVERTON & CATHCART, Campbell Block, Merchant Corner Fort Streets, Honolulu, Hawaii.

For Respondent, RICHARD L. HALSEY, Esq., United States Immigration Inspector-in-charge at the Port of Honolulu.

S. C. HUBER, Esq., United States District Attorney, Honolulu, Hawaii. [1*]

In the United States District Court in and for the District and Territory of Hawaii.

No. 91.

In the Matter of the Application of KIMI YAMAMOTO, for a Writ of Habeas Corpus.

Order Extending Time to April 15, 1916, to Transmit Record on Appeal.

Now on this 16th day of March, A. D. 1916, it appearing from the representations of the clerk of this Court, that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of error in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this Court shall prepare and transmit said transcript of the record on assignment of error in

*Page-number appearing at foot of page of original certified Record.

this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to April 15th, 1916.

Dated, Honolulu, T. H., March 16th, 1916.

CHAS. F. CLEMONS,
Judge, U. S. District Court.

Due service of the above order, and receipt of a copy thereof are hereby admitted this 16th day of March, A. D. 1916.

J. W. CATHCART.
By C. S. FRANKLIN,

[Endorsed]: 91. In the U. S. District Court, Territory of Hawaii. In the Matter of the Application of Kimi Yamamoto for a Writ of Habeas Corpus. Order Extending Time. Filed Mar. 16, 1916. Geo. R. Clark, Clerk. By Wm. L. Rosa, Deputy Clerk. **[2]**

In the United States District Court in and for the District and Territory of Hawaii.

No. 91.

In the Matter of the Application of KIMI YAMAMOTO, for a Writ of Habeas Corpus.

Order Extending Time to May 15, 1916, to Transmit Record on Appeal.

Now on this 15th day of April, A. D. 1916, it appearing from the representations of the clerk of this Court, that it is impracticable for said clerk to pre-

pare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of error in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this Court shall prepare and transmit said transcript of the record on assignment of error in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to May 15, 1916.

Dated, Honolulu, T. H., April 15, 1916.

CHAS. F. CLEMONS,
Judge, U. S. District Court.

Due service of the above order, and receipt of a copy thereof are hereby admitted this 15th day of April, A. D. 1916.

J. W. CATHCART.
By C. S. FRANKLIN.

[Endorsed]: #91. In the United States District Court, for the Territory of Hawaii. In the Matter of the Application of Kimi Yamamoto for a Writ of Habeas Corpus. Order Extending Time to Transmit Record on Appeal. Filed Apr. 15, 1916. George R. Clark, Clerk. By Wm. L. Rosa, Deputy Clerk.

In the United States District Court in and for the District and Territory of Hawaii.

No. 91.

In the Matter of the Application of KIMI YAMAMOTO, for a Writ of Habeas Corpus.

Order Extending Time to June 15, 1916, to Transmit Record on Appeal.

Now, on this 15th day of May, A. D. 1916, it appearing from the representations of the clerk of this Court, that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of error in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this Court shall prepare and transmit said transcript of the record on assignment of error in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to June 15, 1916.

Dated Honolulu, T. H., May 15th, 1916.

CHAS. F. CLEMONS,
Judge, U. S. District Court.

Due service of the above order, and receipt of a

copy thereof are hereby admitted this 15th day of May. A. D. 1916.

S. C. HUBER,
U. S. Attorney.
J. W. CARTHCART.
By C. S. FRANKLIN.

[Endorsed]: #91. United States District Court, Territory of Hawaii. In the Matter of the Application of Kimi Yamamoto for a Writ of Habeas Corpus. Filed May 15, 1916. George R. Clark, Clerk. By Ray B. Rielow, Deputy Clerk. [4]

In the United States District Court in and for the District and Territory of Hawaii.

No. 91.

In the Matter of the Application of KIMI YAMAMOTO, for a Writ of Habeas Corpus.

Statement of Clerk.

TIME OF COMMENCEMENT OF SUIT.

April 13, 1914: Verified petition for writ of habeas corpus, order for issuance of writ of habeas corpus, writ of habeas corpus and marshal's return thereon.

NAMES OF ORIGINAL PARTIES.

Petitioner: Kimi Yamamoto.

Respondent: Richard L. Halsey, Esq., United States Inspector of Immigration-in-charge at the Port of Honolulu.

DATES OF FILING OF THE PLEADINGS.

April 13, 1914: Petition.

May 22, 1914: Return of Richard L. Halsey, Esq., to Order to Show Cause.

May 27, 1915: Traverse of the return of Richard L. Halsey, Esq., respondent.

SERVICE OF PROCESS.

April 13, 1914: Writ issued and delivered to the United States Marshal with the following return by the said United States Marshal: "The within petition, order and writ of habeas corpus were received by me on the 13th day of April, A. D. 1914, and are returned as executed on April 13, 1914, [5] in Honolulu, by hand, upon Richard L. Halsey, United States Immigration Inspector-in-charge at the port of Honolulu, by exhibiting to him the original and handing to and leaving with him a certified copy of the within petition, order and writ of habeas corpus.

E. R. HENDRY,
United States Marshal.
By (Sgd.) H. H. Holt,
Chief Office Deputy.

Dated Honolulu, T. H., April 14, 1914."

HEARINGS.

May 28, 1915: Proceedings at hearing and briefs ordered filed.

August 2, 1915: Proceedings at decision, ordering petitioner discharged under writ herein.

The above hearings were had before the Honorable SANFORD B. DOLE, Judge of said Court.

DECISIONS.

August 2, 1915: Decision sustaining Traverse of the Return of respondent and discharging applicant under writ.

December 16, 1915: Judgment filed and entered (Dole, J.)

PETITION FOR APPEAL.

February 15, 1916: Petition for appeal and order allowing same filed.

United States of America,
Territory of Hawaii,—ss.

I, George R. Clark, clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled suit; the names of the **[6]** original parties thereto; the several dates when the respective pleadings were filed; and account of the proceedings showing the service of the petition and writ of habeas corpus and the time when the judgment herein was rendered and the Judge rendering the same, in the matter of the application of Kimi Yamamoto for a writ of habeas corpus, number 91, in the United States District Court of the Territory of Hawaii.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 23d day of May, A. D. 1916.

[Seal] GEORGE R. CLARK,
Clerk U. S. District Court, Territory of Hawaii.

[7]

In the United States District Court in and for the District and Territory of Hawaii.

In the Matter of the Application of KIMI YAMAMOTO, for a Writ of Habeas Corpus, Directed to RICHARD L. HALSEY, United States Inspector of Immigration at the Port of Honolulu, Commanding and Directing Him to have and Produce the Body of the Said KIMI YAMAMOTO.

Petition for Writ of Habeas Corpus.

To the Honorable SANFORD B. DOLE and CHARLES F. CLEMONS, Judges of the United States District Court for the Territory of Hawaii:

Your petitioner, Kimi Yamamoto, respectfully shows to this Honorable Court and states:

1. That she is and during all the times hereinafter mentioned was and since the —— day of ————, 1897, has been a Japanese alien resident at Honolulu, city and county of Honolulu, Territory of Hawaii; and is not an alien or alien resident within the meaning of the laws of the United States hereinafter referred to. [8]

2. That your petitioner is imprisoned and restrained of her liberty by Richard L. Halsey, Esq., Inspector-in-charge at the United States Immigration Station at Honolulu, aforesaid, without authority of law.

3. That the cause and pretense of such imprisonment and restraint according to the knowledge and

belief of your petitioner, is, that the Secretary of Labor of the United States of America has, by his warrant of deportation, ordered your petitioner to be deported from the port of Honolulu to the Empire of Japan, and that such imprisonment and restraint is for the purpose of such deportation; that the alleged reason as shown by and contained in said warrant for such deportation as your petitioner is informed and believes, is, that your petitioner practiced prostitution, contrary to the provisions of section 3 of the Act of Congress of March 26, 1910, entitled "An Act to Amend an Act Entitled 'An Act to Regulate the Immigration of Aliens into the United States' approved February 20th, 1907."

That your petitioner has no copy of the warrant of deportation hereinbefore referred to, which he can attach to or make a part hereof.

That said imprisonment and restraint is illegal, unlawful, contrary to the provisions of the Constitution of the United States and of the laws of the United States of America, and in that behalf, your petitioner alleges and says, she had not at or prior to the time of the making of the said order of deportation hereinbefore referred to, or at [9] the time of the issuance of the warrant of arrest, hereinafter referred to, practiced prostitution.

And your petitioner is further informed and believes, and upon such information and belief alleges it to be the fact, that heretofore and on, to wit, the 15th day of November, A. D. 1913, the Secretary of Labor issued a warrant, directed to the Inspector-in-charge of the Immigration Station at the port of

Honolulu, or any inspector, directing and commanding him or such inspector to arrest your petitioner, and to require her to show cause to him or to such inspector so arresting her, why she should not be deported to the country whence she came, to wit, the Empire of Japan, in that she had at said Honolulu practiced prostitution; that pursuant to said warrant aforesaid, your petitioner was arrested and caused to be brought before Harry B. Brown, Esq., an inspector of immigration at the port of Honolulu, and thereupon a pretended hearing was had and evidence adduced by the said Harry B. Brown, Esq., in respect to the said charge against your petitioner, but no evidence either competent or otherwise was adduced before the said Harry B. Brown, as inspector as aforesaid, showing or tending to show that your petitioner practiced prostitution; that thereafter and on, to wit, the —— day of March, A. D. 1914, the Secretary of Labor of the United States of America issued the warrant of deportation as aforesaid.

That the warrant of deportation so issued as aforesaid by the Secretary of Labor of the United States of America is illegal and void, in this, that the same is not based upon any valid complaint or charge, and not **[10]** supported by any evidence showing or tending to show that your petitioner, within the United States of America at any time or at all, practiced prostitution.

That the said warrant of deportation, so issued as aforesaid by the Secretary of Labor of the United States of America, is illegal and void in this: That

the same is not based upon any valid complaint or charge, and is not supported by any evidence showing or tending to show that your petitioner is unlawfully within the United States of America. That the said warrant is illegal and void, because the same has been issued by the said Secretary of Labor without there first having been any hearing permitted or allowed to your petitioner on the matters and things in said warrant alleged against her, as the reason why she is unlawfully within the United States of America, and the reason why she should be deported therefrom.

And petitioner further says, that your petitioner has been deprived of her constitutional privilege, in that she has been deprived of her liberty without due process of law, for the reason that she was not allowed the assistance of counsel throughout the pretended examination hereinbefore set forth; and petitioner further says, that your petitioner was arrested on the warrant issued by the Secretary of Labor as aforesaid, upon information furnished by the said Harry B. Brown, Esq., as your petitioner is informed and believes; that the so-called hearing was had before the said Harry B. Brown, Esq., and your petitioner, on information and belief, alleges that the said Harry B. Brown, Esq., or the inspector-in-charge under whom he was acting recommended that your petitioner be deported and that **[11]** the Secretary of Labor acted upon such recommendation without any critical or sufficient examination of the so-called evidence in the case, and that therefore your petitioner has been deprived of her

liberty, and is about to be deported from the United States of America without the said evidence alleged against her being reviewed or considered by the Secretary of Labor, but in fact upon the determination of the officer who caused the charge to be placed against her, and who acted as complainant, arresting officer and Judge.

WHEREFORE, your petitioner prays that a writ of habeas corpus be issued by this Honorable Court, commanding the said Richard L. Halsey, United States Inspector-in-charge of Immigration at the port of Honolulu aforesaid, to have and produce the body of the said Kimi Yamamoto, your petitioner, before this Honorable Court, at the courtroom in the "Model Block," in the city of Honolulu, city and county of Honolulu, Territory of Hawaii, at the opening of Court on the —— day of April, A. D. 1914, in order that the alleged cause of imprisonment and restraint and the legality thereof may be inquired into, and that in case said imprisonment and restraint are unlawful and illegal that your petitioner may be discharged therefrom.

KIMI YAMAMOTO.

(Signed in Japanese characters.)

Dated this 13th day of April, A. D. 1914. **[12]**

United States of America,
Territory of Hawaii,
City and County of Honolulu,—ss.

Kimi Yamamoto, being first duly sworn, deposes and says:

That she is the petitioner in the foregoing peti-

tion; that the same has been read and explained to her, that she knows the contents thereof and that the same is true, except as to those matters therein alleged upon information and belief, and as to those matters so alleged, she believes them to be true.

KIMI YAMAMOTO.
(Signed in Japanese characters.)

Subscribed and sworn to before me this 13th day of April, A. D. 1914.

[Seal] (Sgd.) P. SILVA,
Notary Public, First Judicial Circuit, Territory of Hawaii.

[Endorsed]: No. 91. (Title of Court and Cause.) Petition for Writ of Habeas Corpus. Filed April 13, 1914. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. [13]

In the United States District Court in and for the District and Territory of Hawaii.

In the Matter of the Application of KIMI YAMAMOTO, for a Writ of Habeas Corpus, Directed to RICHARD L. HALSEY, United States Inspector of Immigration at the Port of Honolulu, Commanding and Directing Him to have and Produce the Body of the Said KIMI YAMAMOTO.

Writ of Habeas Corpus.

To Richard L. Halsey, Esq., U. S. Inspector of Immigration in charge at the Port of Honolulu:

We command you that the body of Kimi Yamamoto

in your custody detained, as it is said, together with the day and cause of *his* caption and detention, you safely have before the Honorable Sanford B. Dole, Judge of our District Court of the United States, within and for the Territory of Hawaii, at 10 A. M., on Tuesday, the 14th day of April, 1914, to do and receive all and singular those things which the said Sanford B. Dole, Judge of our said District Court, shall then and there consider *him* in this behalf; and have you then and there the writ. **[14]**

WITNESS the Honorable SANFORD B. DOLE, Judge of the District Court of the United States for the Terrritory of Hawaii, this 13th day of April, 1914, and in the one hundred and thirty-eighth year of the Independence of the United States of America.

[Seal] Attest: A. E. MURPHY,
Clerk.

By (Sgd.) F. L. Davis,
Deputy Clerk.

Let process issue as prayed for.

(Sgd.) S. B. DOLE,
U. S. Dist. Judge, Ter. Hawaii.

MARSHAL'S RETURN.

United States Marshal's Office.

The within petition, order and writ of habeas corpus were received by me on the 13th day of April, A. D. 1914, and are returned as executed on April 13, 1914, in Honolulu, by hand, upon Richard L. Halsey, United States Immigration Inspector-in-charge at the port of Honolulu, by exhibiting to him the orig-

inal and handing to and leaving with him a certified copy of the within petition, order and writ of habeas corpus.

E. R. HENDRY,
United States Marshal.
By (Sgd.) H. H. Holt,
Chief Office Deputy.

Dated Honolulu, T. H., April 14, 1914.

[Endorsed]: No. 91. (Title of Court and Cause.)

Writ of Habeas Corpus. Filed on Return April 14, 1914. A. E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. **[15]**

Order Continuing Hearing, and That Applicants be Released on Furnishing of Bond.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court; Tuesday, April 14, 1914. Vol. 9, Part 1, Folio 105.

(Title of Court and Cause.)

On this day came the above applicant in person, and with his counsel Mr. J. W. Cathcart, and also came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, and this cause was called for hearing on respondent's return to the writ herein. Thereupon on motion of Mr. Thompson, and consent of Mr. Cathcart, it was by the Court ordered that this cause be continued until called for hearing, and that the said applicant be released upon furnishing a bond herein in the sum of $250. **[16]**

In the District Court of the United States for the Territory of Hawaii.

In the Matter of the Petition of KIMI YAMAMOTO, for a Writ of Habeas Corpus.

Return of Richard L. Halsey to Order to Show Cause.

Comes now Richard L. Halsey, Inspector-in-charge, and in obedience to the order to show cause, heretofore issued in this case, hereby certifies and makes return to the Hon. S. B. Dole, Judge of the above-entitled court, as follows:

1. He admits that the petitioner is a Japanese alien resident of Honolulu, county of Honolulu, Territory of Hawaii, but does not know *that* date of her arrival, but presumes the statement in her petition is correct as to the date of the beginning of her residence; but he does deny the statement that she makes when she states she is not an alien resident that comes within the list prohibited by the laws of the United States.

2. He admits that he is the inspector-in-charge at the United States Immigration Station, at Honolulu, but denies her statement that her arrest and detention is "without authority," but on the contrary states that she was arrested **[17]** and is now detained under a warrant for her arrest, duly issued by the Secretary of Commerce and Labor of the United States on the 19th day of December, 1913, which secretary had full power and authority to issue said warrant, and being so directed by said

warrant she was arrested and is being detained.

3. The cause of the issuance of such warrant of arrest and deportation is based on the provisions of section 3 of the Act of Congress, as amended March 26th, 1910, entitled, "An Act to Amend an Act Entitled 'An Act to Regulate the Immigration of Aliens into the United States.' "

The petitioner in her petition for writ of habeas corpus, article 3, states, "she had not at or prior to the time of the making of said order of deportation hereinbefore referred to, or at the time of the issuance of the warrant of arrest, hereinafter referred to, practiced prostitution." On the 18th day of November, 1913, she signed a sworn statement before the Inspector of Honolulu, T. H., that she had been practicing prostitution and that she began to practice the same four years ago, and that she had practiced it thereafter; thereupon it was recommended that a warrant for her arrest be issued, and a warrant was thereupon issued on the 19th day of November, 1913, by the Secretary of Labor for the arrest of petitioner, and to grant her a hearing to enable her to show cause why she should not be deported in conformity with law.

She was arrested and given a hearing. Then followed a transmission of the records to the Secretary of Labor at Washington, D. C.; thereupon on the 24th day March, 1914, a warrant of deportation was issued by the aforesaid Secretary of Commerce and Labor.

Copies of warrant, orders, etc., filed in this cause are referred to and are made a part and parcel of this [18] answer.

He further alleges that petitioner was given a full, fair and impartial hearing, and that all records were duly transmitted to the Secretary of Labor and that all the proceedings of the above-styled cause were regular and in accordance with the Immigration laws and that she is not illegally restrained.

He therefore prays that the petition be dismissed and the petitioner be further remanded to respondent to be dealt with according to law.

May 22, 1914.

(Sgd.) RICHARD L. HALSEY,
Inspector-in-charge.

(Sgd.) J. W. THOMPSON,
Asst. United States Attorney. **[19]**

Testimony of Kimi Yamamoto.

COPY.

DEPARTMENT OF LABOR.
IMIGRATION SERVICE.

H. B. BROWN, Inspector.
T. KATSUNUMA, Interpreter.
M. SPALDING, Stenographer.

Port of Honolulu, T. H.
November 17, 1913.

Case of KIMI YAMAMOTO.

WITNESS sworn, testifies:

INSPECTOR: Q. What is your name?

WITNESS.—A. Kimi Yamamoto.

Q. How old are you? A. 35.

Q. Where were you born?

A. Nakajima Mura, Niigata Ken, Japan.

Q. When did you first come to Hawaii?

A. 15 years ago.

Q. What boat did you come on? A. Gaelic.

Q. What month? A. October.

Q. Did you come alone?

A. With my husband.

Q. What is his name?

A. Jiunsaku Hirosake.

Q. Are you still married to him?

A. I am divorced from him.

Q. Where is he now? A. In Japan.

Q. When did he go to Japan?

A. Ten years ago.

Q. Have you married again? A. No.

Q. Have you been living with a man named Okasaki? A. No.

Q. Since you and your husband separated have you had a sweetheart or paramour? A. No.

Q. Sure of that, are you? A. Yes.

Q. Been living all by yourself all this time?

A. Yes.

Q. What have you been doing for a living?

A. Practicing prostitution.

Q. When did you begin to practice prostitution?

A. 11 years ago, but not continually, sometimes stop several months.

Q. When was the last time you practiced prostitution?

A. Three months before you made the big raid.

Q. Why did you stop at that time?

A. I was suffering from eye trouble and I was under doctor's care. I heard that you were go-

ing to arrest and send prostitutes back to their own country so I stopped.

Q. What have you been doing since you stopped practicing prostitution?

A. I have nothing to do yet because my eyes are not well yet.

Q. What kind of sickness did you have in your eyes?

A. Trachoma and my eyesight is getting dull.

Q. Are you sure that you have not had a sweetheart or paramour? A. No, I have none.

Q. Are you saving your money all for yourself?

A. Well, I saved some money but sent some to Japan to my elder sister and my mother.

Q. Any further statement you wish to make?

A. No.

(Notes signed by witness in Japanese only.)

Copy of Japanese characters:

(Signature) KIMI YAMAMOTO.

November 17, 1913.

Certified Correct:

(Sgd.) MAURICE SPALDING,
Stenographer. **[20]**

Application for Warrant of Arrest.

COPY.

Form 565.

Application for warrant of arrest under Sections 20 and 21 of the Act of February 20, 1907.

U. S. DEPARTMENT OF LABOR.

Immigration Service.

4280/92 (Place) Port of Honolulu, T. H.,

November 17, 1913.

The undersigned respectfully recommends that the Secretary of Labor issue his warrant for the arrest of KIMI YAMAMOTO, the alien named in the attached certificate, upon the following facts which the undersigned has carefully investigated, and which, to the best of his knowledge and belief, are true:

(1) (Here state fully facts which show alien to be unlawfully in the United States. Give sources of information, and where possible, secure from informants and forward with this application duly verified affidavits setting forth the facts within the knowledge of the informants.)

That she is a prostitute and has been practicing prostitution, as shown by her own testimony.

(2) The present location and occupation of above-named alien are as follows:

Honolulu, T. H., nothing right now but last occupation was prostitution.

Pursuant to Rule 22 of the Immigration Regulations there is attached hereto and made a part hereof the certificate prescribed in subdivision 2 of said Rule, as to the landing or entry of said alien, duly

signed by the immigration officer in charge at the port through which said alien entered the United States.

(Signature) (Sgd.) RICHARD L. HALSEY,
(Official Title) Inspector-in-charge. **[21]**

COPY.

CERTIFICATE AS TO LANDING OF ALIEN.
DEPARTMENT OF LABOR.
IMMIGRATION SERVICE.

Port of Honolulu, T. H.,
November 17, 1913.

4280/92

I am unable to verify the landing of KIMI YAMAMOTO, an alien, at the present aime.

(Sgd.) RICHARD L. HALSEY,
Inspector-in-charge. **[22]**

Telegram, November 18, 1913, Halsey to Immigration, Washington, D. C.

COPY.

CONFIRMATION OF TELEGRAM.
DEPARTMENT OF COMMERCE AND LABOR.
IMMIGRATION SERVICE.

No. 4280/92, 93.

Office of Inspector-in-charge,
Port of Honolulu, T. H.,
November 18, 1913.

IMMIGRATION WASHINGTON DC.

Wadding KIMI YAMAMOTO and CHIYE KAJIKAMI Prognosis HALSEY.

(Interpretation of the code words "Wadding & Prognosis";

"Wadding"; Provisions of warrant regulations having been complied with and evidence forwarded by mail, warrant of arrest by telegraph requested in case of alien. . . .

"Prognosis"; Alien found practicing prostitution after entry.)

The above is an official copy of telegram sent this day.

(Sgd.) RICHARD L. HALSEY,
(Name)
Inspector-in-charge.
(11–4270) (Title)

(Notation: Exact copy as signed by Richard L. Halsey, mailed Nov. 18, 1913, by Richard L. Halsey.)

[23]

Cablegram, November 19, 1913, Acting Secretary to Immigration, Honolulu.

COPY.

CABLEGRAM.

Commercial Pacific Cable Co.

Received at 1.15 PM E Nov. 19, 1913.

44 USG WASHINGTON DC 14

IMMIGRATION, HONOLULU

ARROW KIMI YAMAMOTO AND CHIYE KAJIKAMI PROGNOSIS.

LOUIS F. POST,
ACTING SECRETARY.

(Interpretation of code words "Arrow" and "Prognosis":)

"Arrow": Arrest following-named alien (s) and bring before yourself for hearing forwarding record

of proceedings to the Department.

"Prognosis": Alien found practicing prostitution after entry. **[24]**

COPY.

Form 561. WARRANT—ARREST OF ALIEN.

UNITED STATES OF AMERICA,
DEPARTMENT OF LABOR,
No. 53678/567

WASHINGTON.

To Richard L. Halsey, Inspector-in-charge, Honolulu, T. H., or to any Immigrant Inspector in the Service of the United States.

Whereas, from evidence submitted to me, it appears that the alien KIMI YAMAMOTO and CHIYE KAJIKAMI, who landed at an unknown port, have been found in the United States in violation of the Act of Congress approved February 20, 1907, amended by the Act approved March 26, 1910, for the following among other reasons:

That the said aliens are prostitutes and have been found practicing prostitution subsequent to their entry into the United States.

I, Louis F. Post, Acting Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said aliens and grant them a hearing—to enable them to show cause *why should* not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized from the appropriation, "Expenses of Regulating Immigration 1914." Pending further

proceedings the aliens may be released from custody upon furnishing satisfactory bond in the sum of $1000 each.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 19th day of November, 1913.

WW. (Signed) LOUIS F. POST,
Acting Secretary of Labor.

11–2719 **[24a]**

Letter, December 27, 1913, Immigrant Inspector to Sheldon.

COPY.

No. 4280/92. Office of Inspector-in-charge.
Honolulu, Hawaii,
December 27, 1913.

W. J. Sheldon,
Attorney at Law,
Merchant St., Honolulu, T. H.

Sir: You are hereby notified that a further hearing in the case of KIMI YAMAMOTO will be held Tuesday, December 30th, 1913, at 2:00 P. M., at which time she will be given an opportunity to defend herself from the charge upon which she has been arrested.

Respectfully,
H. B. BROWN,
Immigrant Inspector. **[25]**

Letter, March 2, 1914, Sheldon to Inspector of Immigration.

COPY.

WM. JARRETT SHELDON,
Attorney,
Honolulu, T. H.

Honolulu, March 2d, 1914.

Department of Commerce and Labor,
Immigration Service.

To H. B. Brown, Esq.,
Inspector of Immigration,
Honolulu, T. H.

Dear Sir: In the case of Kimi Yamamoto, she has acknowledged to you that she has practiced prostitution for a number of years; that she was given a certificate of health by the local authorities; and did practice prostitution under police regulations; and was under the impression that it was not contrary to law; that since it has become known to her that in fact it was contrary to law, she has not since practiced prostitution.

And she humbly prays that if she be given her liberty, she will not commit any further violation of the law, to wit: the immigration laws of the United States.

And defendant will ever pray.

KIMI YAMAMOTO.
By Her Attorney,
WM. J. SHELDON. [26]

COPY.

DEPARTMENT OF LABOR.

In re:
KIMI YAMAMOTO, #4280/92
Port of Honolulu, T. H.
March 3d, 1914.

STATEMENT OF ATTORNEY W. J. SHELDON, FOR DEFENDANT.

Attorney W. J. Sheldon appears and states that he does not desire to file any brief or furnish any further evidence in this case. **[27]**

Remarks by Immigrant Inspector.

COPY.

DEPARTMENT OF LABOR.
UNITED STATES IMMIGRATION SERVICE.
In re:
KIMI YAMAMOTO
Port of Honolulu, T. H.
No. 4280/92.
March 9th, 1914.

REMARKS BY EXAMINING INSPECTOR.

From the testimony offered in this case it appears that this woman is an alien and that she has been practicing prostitution. In my opinion she is a proper person for whom a warrant of deportation should issue.

(Sgd.) H. B. BROWN,
Immigrant Inspector. **[28]**

Form 562.

WARRANT—DEPORTATION OF ALIEN.

UNITED STATES OF AMERICA.

Department of Labor.

No. 53678/567.

To Richard L. Halsey, Inspector-in-charge, Honolulu, T. H.:

WHEREAS, from proofs submitted to me, after due hearing before Immigrant Inspector Harry B. Brown, held at Honolulu, T. H., I have become satisfied that the alien KIMI YAMAMOTO, or KIMI YAMANOTO and CHIYE KAJIKAMI, who landed at the port of Honolulu, T. H., on the —— day of ————, have been found in the United States in violation of the Act of Congress approved February February 20, 1907, amended by the Act approved March 26, 1910, to wit:

That the said aliens are prostitutes and have been found practicing prostitution subsequent to their entry into the United States, and may be deported in accordance therewith.

I, J. B. Densmore, Acting Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said aliens to Japan, the country whence they came, at the expense of the appropriation "Expenses of Regulating Immigration, 1914."

You are directed to purchase transportation for the aliens from Honolulu, T. H., to their home in Japan, at the lowest scheduled rate obtainable from the Pacific Mail Steamship Company, payable from

the above-mentioned appropriation.

For so doing, this shall be your sufficient warrant.

Witness, my hand and seal this 24th day of March, 1914.

[Seal] (Signed) J. B. DENSMORE,
Acting Secretary of Labor.

CEB.
11–2721. **[29]**

[Endorsed]: No. 91. (Title of Court and Cause.) Return of Richard L. Halsey to Order to Show Cause. Filed May 22, 1914. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. **[30]**

Order Continuing Hearing to December 9, 1914.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Monday, December 7, 1914. Vol. 9, Part 1, Folio 411.

(Title of Court and Cause.)

On this day came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called to be set for hearing. Thereupon it was by the Court ordered that this cause be continued to December 9, 1914, at 2 o'clock P. M., for disposition. [31]

Order Continuing Hearing to December 16, 1914.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Wednesday, December 9, 1914. Vol. 9, Part 1, Folio 414.

(Title of Court and Cause.)

On this day came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called for hearing. Thereupon it was by the Court ordered that this cause be continued to December 16, 1914, at 10 o'clock A. M., for hearing. [32]

Order Continuing Hearing to December 18, 1914.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Wednesday, December 16, 1914. Vol. 9, Part 1, Folio 422.

(Title of Court and Cause.)

On this day came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called for hearing. Thereupon it was by the Court ordered that this cause be continued to December 18, 1914, at 2 o'clock P. M., for hearing. [33]

Order Continuing Hearing to January 5, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Friday, December 18, 1914. Vol. 9, Part 1, Folio 427.

(Title of Court and Cause.)

On this day came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called for hearing. Thereupon it was by the Court ordered that this cause be continued to January 5, 1915, at 2 o'clock P. M., for hearing. [34]

Order Continuing Hearing to January 23, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Tuesday, January 5, 1915. Vol. 9, Part 1, Folio 448.

(Title of Court and Cause.)

On this day came Mr. J. W. Cathcart, counsel for the above applicant and also came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, and this cause was called for hearing. Thereupon it was by the Court ordered that this cause be continued to January 23, 1915, at 10 o'clock A. M., for hearing. [35]

Order Continuing Hearing to January 30, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, January 23, 1915. Vol. 9, Part 1, Folio 472.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called for hearing. Thereupon on motion of Mr. McCarn, it was by the Court ordered that this cause be continued to January 30, 1915, at 10 o'clock A. M., for hearing. [36]

Order Continuing Argument to Feburary 6, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, January 30, 1915. Vol. 9, Part 1, Folio 482.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called for argument. Thereupon on motion of Mr. McCarn, it was by the Court ordered that this cause be continued to February 6, 1915, at 10 o'clock A. M., for argument. [37]

Order Continuing Argument to February 13, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, February 6, 1915. Vol. 9, Part 1, Folio 495.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to February 13, 1915, at 10 o'clock A. M., for argument. [38]

Order Continuing Argument to February 27, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, February 13, 1915. Vol. 9, Part 1, Folio 508.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither of the above applicant or her counsel being present, and this cause was called for argument. Thereupon on motion of Mr. McCarn, it was by the Court ordered that this cause be continued to February 27, 1915, at 10 o'clock A. M., for argument. [39]

Order Continuing Argument to March 6, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Friday, February 26, 1915. Vol. 9, Part 1, Folio 525.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, whereupon it appearing to the Court that the above cause had been heretofore continued to February 27, 1915, at 10 o'clock A. M., for argument, it was by the Court ordered that the said cause be at this time continued to March 6, 1915, at 10 o'clock A. M., for such argument. [40]

Order Continuing Argument to March 13, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, March 6, 1915. Vol. 9, Part 1, Folio 535.

(Title of Court and Cause.)

The within cause being called on this day for argument and none of counsel for the respective parties being present, it was by the Court ordered that this cause be continued to March 13, 1915, at 10 o'clock A. M., for argument. [41]

Order Continuing Argument to April 10, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, March 13, 1915. Vol. 9, Part 1, Folio 543.

(Title of Court and Cause.)

On this day came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to April 10, 1915, at 10 o'clock A. M., for argument. [42]

Order Continuing Argument to April 24, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, April 10, 1915, Vol. 9, Part 1, Folio 568.

(Title of Court and Cause.)

The within cause being called on this day for argument and none of counsel for the respective parties being present, it was by the Court ordered that this cause be continued to April 24, 1915, at 10 o'clock A. M., for argument. [43]

Order Continuing Argument to May 8, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, April 24, 1915. Vol. 9, Part 2, Folio 606.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to May 8, 1915, at 10 o'clock A. M., for argument. [44]

Order Continuing Argument to May 22, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, May 8, 1915. Vol. 9, Part 2, Folio 646.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to May 22, 1915, at 10 o'clock A. M., for argument. [45]

Order Continuing Argument to May 28, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, May 22, 1915. Vol. 9, Part 2, Folio 669.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or *his* counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to May 28, 1915, at 2 o'clock P. M., for argument. [46]

In the District Court of the United States for the Territory of Hawaii.

In the Matter of the Petition of KIMI YAMAMOTO for a Writ of Habeas Corpus.

Traverse of the Return of Richard L. Halsey, Respondent.

To the Honorable SANFORD B. DOLE and the Honorable CHARLES CLEMONS, Judges of the United States District Court for the Territory of Hawaii.

Comes now the petitioner above named, Kimi Yamamoto, and for answer and traverse to the return of Richard L. Halsey, respondent above named, respectfully shows to this Court:

1. Petitioner denies that she is a resident alien

subject to the Immigration Laws of the United States of America, as alleged in paragraph 1 of said return. But petitioner alleges that she came to the Hawaiian Islands prior to the same being annexed to the United States of America, and while the Republic of Hawaii was the sovereign power of the territory of the Hawaiian Islands. **[47]**

2. Petitioner denies that she is being held and detained by virtue of any legal warrant of deportation. But alleges that the said warrant of deportation is illegal and void. Petitioner alleges that the hearing of her appeal from the decision of the Board of Special Inquiry and Harry B. Brown, Esq., an inspector of immigration at the port of Honolulu, to the Secretary of Labor was not heard or considered by the said Secretary of Labor or the Assistant Secretary of Labor, but by some other person designated as the Acting Secretary of the Department of Labor of the United States, and alleges that at the time the appeal was so considered by the said person so claiming to be Acting Secretary and at the time of the adjudication thereon and at the time of the issuance of the alleged warrant of deportation, the said secretary of the Department of Labor and the said Assistant Secretary of Labor of the United States of America were present at their posts in the city of Washington, District of Columbia, and were attending to the duties of their said office, and that the said person so claiming to be acting as Secretary of the Department of Labor had no right or authority in law to so act.

3. Petitioner denies all and singular the allega-

tions contained in paragraph 3 of said return.

4. Petitioner further alleges that she had no valid or legal or fair or impartial hearing before the said Board of Special Inquiry or Harry B. Brown, Esq., an inspector of immigration at the port of Honolulu; that there was no examination of the witnesses under oath and that petitioner was not allowed counsel, but on the contrary that she was arrested and examined and compelled to be a witness against herself, and counsel refused and denied to her, in violation of the [48] rights guaranteed to her by the Constitution of the United States.

5. Petitioner denies that she is a prostitute or has practiced prostitution as in said return alleged.

WHEREFORE, petitioner prays that she be discharged from the custody of the said Richard L. Halsey.

Dated May 27, 1915.

KIMI YAMAMOTO,
(Signed in Japanese characters),
Petitioner.

United States of America,
Territory of Hawaii,
City and County of Honolulu,—ss.

Kimi Yamamoto, being first duly sworn, deposes and says:

That she is the petitioner named in the foregoing traverse; that the same has been read and explained to her, that she knows the contents thereof and that the same is true, except as to those matters therein alleged upon information and belief, and as to those

matters she believes it to be true.

KIMI YAMAMOTO.

(Signed in Japanese characters.)

Subscribed and sworn to before me this 27th day of May, A. D. 1915.

(Sgd.) P. SILVA,

Notary Public, First Judicial Circuit, City and County of Honolulu, Territory of Hawaii.

[Endorsed]: No. 91. (Title of Court and Cause.) Traverse of the Return of Richard L. Halsey, Respondent. Filed May 27, 1915, at 2 o'clock, 52 minutes P. M. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk. [49]

Order of Submission of May 28, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Friday, May 28, 1915, Vol. 9, Part 2, Folio 677.

(Title of Court and Cause.)

On this day came Mr. J. W. Cathcart, counsel for the above applicant, and also came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, and this cause was called for argument. Thereupon and after due argument by the respective counsel, the Court ordered that the matters herein be submitted on briefs. [50]

Order Re Filing of Opinion, etc.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Monday, August 2, 1915, Vol. 9, Part 2, Folio 739.

(Title of Court and Cause.)

On this day came Mr. J. W. Cathcart, counsel for the above applicant, and also came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, and this cause was called for decision. Thereupon the Court read and filed its decision herein discharging the said applicant under the writ herein, and ordering that said applicant's bond be cancelled and the sureties thereon discharged. **[51]**

In the United States District Court for the Territory of Hawaii.

April, A. D. 1915, Term.

No. 75.

In the Matter of the Application of SUI JOY for a Writ of Habeas Corpus.
(Also WONG YUEN, No. 74.)
(Also CHING LUM, No. 73.)
(Also KIMI YAMAMOTO, No. 91.)

Opinion on Demurrer to Return to Writ of Habeas Corpus.

August 2, 1915.

Immigration—Deportation—Entering the United

States: An alien who came to the Hawaiin Islands previous to their annexation to the United States, and was living there at the time of such annexation, cannot be said to "have entered the United States" within the meaning of section 3 of the act of February 20, 1907, as amended by the act of March 26, 1910, 36 Stat. 263.

Same—Same—Same—Actual landing subject to statutory conditions: The provisions of the said statute for the deportation of aliens found "to be unlawfully within the United States," presume an actual landing of such aliens, subject to the conditions as to conduct set forth in the statute.

Habeas Corpus: On demurrer to return.

THOMPSON, WILDER, WATSON & LYMER, for Petitioners Sui Joy, Wong Yuen, and Ching Lum.

J. W. CATHCART, for Petitioner Kimi Yamamoto.

JEFF McCARN, United States District Attorney, for Respondent. [52]

In the first three of the above cases demurrers to the petitions were overruled, whereupon the respondent filed his returns which were demurred to by the petitioners, the fifth ground of demurrer being as follows: "That it does not appear in the said return that the said Sui Joy is an alien who has ever entered the United States within the meaning of the law herein provided." In the fourth case, the petitioner filed a traverse to the return of the respondent, in which, among other things, she raised the

same point as raised on the fifth ground of the said demurrers, to wit, that she was not subject to the immigration laws of the United States, having come to the Hawaiian Islands while they were under the jurisdiction of the Republic of Hawaii.

The argument on this point is, briefly, that the petitioners, having come to the Hawaiian Islands previous to annexation, as alleged, and being domiciled residents here at the time of annexation, the statute does not apply to them, such persons, although aliens, not having "entered" the United States.

The following is the immigration rule applying to these cases:

> "The application must state facts bringing the alien within one or more of the classes subject to deportation after entry. The proof of these facts should be the best that can be obtained. The application must be accompanied by a certificate of landing (to be obtained from the immigration officer in charge at the port where landing occurred), or a reason given for its absence, in which case effort should be made to supply the principal items of information mentioned in the blank form provided for such certificates. Telegraphic application may be resorted to only in case of necessity and must state (1) that the usual written application has been made and forwarded by mail, and (2) the substance of the facts and proof therein contained." Immigration Rule 22, subdivision 2.

The statute under which the petitioners are held is a part of section 3 of the act of February 20, 1907, as amended by the act of March 26, 1910, 36 Stat. 263. It is as follows:

> "Any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution *after such alien shall have entered the United States,* or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute, or who is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists, protects, or promises to protect from arrest any prostitute, shall be deemed to be unlawfully within the United States and shall be deported in the manner provided by sections 20 and 21 of this act."

The demurrers are allowed on the fifth ground. It is obvious from a reading of division 2 of Immigration Rule 22, above quoted, that the Commissioner General of Immigration and the Secretary of Labor, who are authorized by the Immigration Act of February 20, 1907, 34 Stat. 898, sec. 22, to establish rules for carrying out the provisions of the act, have constructed the act on the point referred to, as meaning an actual entry or landing in the United States. The said division 2 of the 22d rule, in providing for an application by the immigration officers to the Secretary of Labor for authority to arrest an alien

suspected of being unlawfully in the United States, requires, among other things, that the application "shall be accompanied by a certificate of landing (to be obtained from the immigration officer in charge at the port where the landing occurred), or a reason given for its absence." Of course, this can refer to nothing else than an actual landing in the United States. This construction is rendered still more positive by the "certificate of landing," required by the rule to accompany the application. The blank form provided by the Secretary of Labor and the Commissioner [54] General of Immigration under the authority of the statute, is as follows:

"Form 564.

Certificate as to Landing of Alien.

(To accompany application for warrant of arrest)

DEPARTMENT OF COMMERCE AND LABOR.

Immigration Service.

————, 190—.

I hereby certify that I have examined the records of the immigrant station at —— with reference to the record of the landing or entry of ——, an alien, and that the following facts relative to such landing or entry are disclosed by said records.

(1) Name of alien, ——; age, ——; sex, ——.

(2) Race, ——; country whence alien came, ——.

(3) Exact date and port of arrival in the United States, ——.

(4) Name of vessel and line, ————————
(If alien arrived via Canada or Mexico, so state.)

(5) Destination, ——.
(6) Occupation, ——; money brought, $——.
(7) By whom passage paid, ——.
(8) Whether ever in United States before, ——.
(9) Whether inspected at time of arrival, ——.

(If held for special inquiry, so state.)
Remarks:——————————

(Signature)——————————
(Official title)——————————"

Such construction, being authoritative and official, is entitled to great weight. Endlich's Interpretation of Statutes, s. 357.

Counsel in the Sui Joy, Ching Lum and Wong Yuen cases, set forth somewhat exhaustively the constitutional argument that Congress derived its power to legislate as to immigrant aliens after being admitted, solely from section 8 of the first article of the Constitution of the United States, which gives it the power "to regulate commerce with foreign nations." Quoting from the brief, "the [55] theory is that commerce with foreign nations includes not only an exchange of commodities, but also the importation or incoming of passsengers. The proposition that Congress has no power to regulate the affairs of individual persons in the United States except as incidental to some one of the powers expressly given to it by the Constitution, is fundamental." It follows, therefore, that whereas Congress may permit an alien immigrant to land under certain conditions as to conduct thereafter while

in the country, involving forcible deportation upon his failure to conform to such conditions, it may not deport alien residents for similar conduct, with whom there has been no such conditional entry into the United States. In other words, an alien resident of the United States in regard to whom there was no condition as to his conduct during his residence, that was made the basis of his landing or entry into the country by a then existing statute, is not within the scope of section 3 of the Immigration Act of February 20, 1907, as amended by the act of March 26, 1910. Plainly the law does not affect persons who have not *entered* the United States previous to doing the acts charged. These petitioners all claim to have been living in Hawaii before and at the time of annexation. In matters of immigration the word *enter* has not acquired a technical meaning. It would appear that these cases might well have been disposed of on their inception, on the ground that the statute is too clear to require interpretation. *"Absoluta sententia expositore indiget."* Potter's Dwarris, 128; Vattel's first rule, id. 126.

As the ruling on this ground of the demurrer disposes of the cases, the Court need not consider the **[56]** other grounds.

It is not clear whether there remains a question of fact to be decided. The returns in the first three cases do not specifically deny the allegations of residence in Hawaii before annexation, but make a general denial of all further allegations and averments of said petitions necessary to be denied. The return in the fourth case accepts the allegation of

the petition in that case that the petitioner arrived in Hawaii in the year 1897, as correct. She (Kimi Yamamoto) is, therefore, under the foregoing conclusions, entitled to her discharge under the writ, which is hereby ordered.

If the respondent desires to contest the allegations of residence in Hawaii, in the three first cases, an opportunity will be given, otherwise such petitioners will be discharged.

(Sgd.) SANFORD B. DOLE,
Judge of the United States District Court for the Territory of Hawaii. **[57]**

Supplementary Decision.

On the afternoon of the day the foregoing decision was given in open court, counsel on both sides filed the following stipulation:

> "It is hereby stipulated and agreed by and between the United States of America through J. W. Thompson, its Assistant District Attorney of the District and Territory of Hawaii, and Sui Joy, Ching Lum and Wong Yuen, by their attorneys, Thompson & Milverton, that each of said petitioners were residents of the Hawaiian Islands for a period of more than five (5) years prior to the 15th day of June, A. D. 1900."

By which stipulation it would appear that the said petitioners were resident here for over three years before the annexation of Hawaii to the United States, which took place August 12, 1898. The court was thereupon prepared to order the discharge of the petitioners, according to the conclusions of the fore-

going decision, but before such order was effectuated the assistant district attorney, acting for the respondent, moved the court for an opportunity of showing that the petitioners severally visited China after annexation and returned again to Hawaii.

Such motion must be denied, inasmuch as the cases contain no pleadings which would form a basis for such testimony,—as there is no showing that such information is newly discovered and as such information, if it exists, obviously has been, during the pendency of these proceedings, within the reach of the respondent.

The writs are made absolute and the petitioners discharged.

Honolulu, T. H., August 4, 1915.

(Sgd.) SANFORD B. DOLE,
Judge of the United States District Court for the Territory of Hawaii. [58]

[Endorsed]: No. 91. (Title of Court and Cause.) Decision of Dole, J., on Demurrer to Return. Filed Aug. 2, 1915. A. E. Murphy, Clerk. By (Sgd.) F. L. Davis, Deputy Clerk, and Supplementary Decision. Filed Aug. 9, 1915. A. E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. [59]

In the United States District Court for the Territory of Hawaii.

October, A. D. 1915, Term.

No. 91.

In the Matter of the Application of KIMI YAMAMOTO for a Writ of Habeas Corpus.

Judgment.

At the regular April, A. D. 1915, term of the District Court of the United States in and for the District and Territory of Hawaii, held in the courtroom of said court, city and county of Honolulu, in the Territory of Hawaii and the District aforesaid, on the 2d day of April, A. D. 1915, the above-entitled matter having heretofore been heard on the pleadings, evidence adduced before the Court, and argument of counsel for the respective parties, and due deliberation thereon, the Court finds that the above-named petitioner, Kimi Yamamoto, is entitled to be discharged, subject to the taking of an appeal by the respondent herein, Richard L. Halsey, in which case the said applicant Kimi Yamamoto will be required to give recognizance with surety in the sum of $500 to answer the judgment of the appellate court.

NOW, THEREFORE, it is hereby ordered, adjudged and decreed that the above-named petitioner, Kimi Yamamoto be, and *he* is hereby discharged from custody herein, subject to the taking of an appeal, and subject to exception by the United States of America.

And the Court being advised that the above-entitled cause will be removed to the appellate court by proper proceedings [60] to be had in that behalf, does hereby further order, adjudge and declare that the above-named Kimi Yamamoto give *his* recognizance with surety in the sum and amount of $500, to answer the judgment of the appellate court.

Given, made and dated at Honolulu, Territory and District aforesaid, this 16th day of December, A. D. 1915.

(Sgd.) SANFORD B. DOLE,
Judge, U. S. District Court.

[Endorsed]: No. 91. (Title of Court and Cause.) Judgment. Entered in J. & D. Book, 2 folio, 657. Filed Dec. 16, 1915. F. L. Davis, Clerk. By (Sgd.) Ray B. Rietow, Deputy Clerk. [61]

In the United States District Court for the Territory of Hawaii.

In the Matter of the Petition of KIMI YAMAMOTO for a Writ of Habeas Corpus.

Petition for Appeal.

To the Honorable CHARLES F. CLEMONS, Judge of the Above-entitled Court:

The United States of America, by its attorney, Horace W. Vaughan, conceiving itself aggrieved by the order and judgment made and entered on the 16th day of December, A. D. 1915, in the above-entitled proceeding, does hereby appeal from the said order and judgment to the Circuit Court of Appeals for the Ninth Circuit, and files herewith its assignment of errors intended to be urged upon appeal, and it prays that its appeal may be allowed, and that a transcript of the record of all proceedings and papers upon which said order and judgment was made, duly authenticated, may be sent to the Circuit Court of Appeals for the Ninth Circuit of the United States.

Dated this 31 day of January, A. D. 1916.

(Sgd.) HORACE W. VAUGHAN,
United States Attorney.

Received a copy of the above petition:

_____,
By Her Attorneys,
_____. [62]

[Endorsed]: No. 91. (Title of Court and Cause.) Petition for Appeal. Filed Feb. 15th, 1916. (Sgd.) F. L. Davis, Clerk. [63]

In the United States District Court for the Territory of Hawaii.

In the Matter of the Petition of KIMI YAMAMOTO for a Writ of Habeas Corpus.

Order Allowing Appeal.

Upon application and motion of Horace W. Vaughan, United States Attorney for the District and Territory of Hawaii:

IT IS HEREBY ORDERED, that the petition for appeal, heretofore filed herein by the United States of America, be, and the same is hereby granted; and that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final order and judgment heretofore, on December 16th, 1915, filed and entered herein, be and the same is hereby allowed, and that a transcript of the record of all proceedings and papers upon which said final order and judgment was made, duly certified and authenticated, be transmitted, under the hand and seal of the clerk of this court, to the United States Cir-

cuit Court of Appeals for the Ninth Judicial Circuit of the United States, at San Francisco, in the State of California.

Dated, this 31st day of January, A. D. 1916.

(Sgd.) CHAS. F. CLEMONS,
Judge, U. S. District Court.

Received a copy of the above order:

_____,
By Her Attorneys.
_____. [64]

[Endorsed]: No. 91. (Title of Court and Cause.) Order Allowing Appeal. Filed Feb. 15th, 1916. (Sgd.) F. L. Davis, Clerk. [65]

In the United States District Court for the Territory of Hawaii.

In the Matter of the Application of KIMI YAMAMOTO for a Writ of Habeas Corpus.

Assignment of Errors.

And now comes the United States of America, by Horace W. Vaughan, its attorney, and says that in the record and proceedings in the above-entitled matter there is a manifest error and that the final record and judgment, made and entered in said matter on the 16th day of December, A. D. 1915, is erroneous and against the just rights of the said United States, in this, to wit:

I.

That the Court erred in assuming jurisdiction of this matter because the same involved a determination of facts, which facts had been submitted to the

Secretary of Labor after a due and proper hearing before the Inspector of Immigration at the port of Honolulu, and this Court had no jurisdiction or authority to further inquire into the facts found, nor to assume jurisdiction upon the matter in controversy.

II.

That the Court erred in holding that because the petitioner had been an alien resident in the Hawaiian Islands, Republic of Hawaii, and not then within the jurisdiction of this court before the year 1897, and because the now Territory of Hawaii was not at that time an integral part of the United States of America, nor a territory [66] thereof, the laws of the United States providing for the entry of aliens into the United States, or the deportation of aliens from the United States, or any of its territories, did not apply.

III.

That from the evidence submitted to the Secretary of Labor, it was established beyond doubt that there was evidence to prove that the petitioner was a prostitute and engaged in prostitution subsequent to her entry into the United States, the Court nevertheless held that because she had resided within the Republic of Hawaii in the year 1897, she was not liable to deportation, although she might carry on her prostitution in defiance of the law, although since the annexation of the Republic of Hawaii, and since this proceeding was begun, she was within the jurisdiction of this court.

IV.

That it was admitted by the alien petitioner, and by her attorneys, that she was an alien, and the court erred in holding that notwithstanding said admission, that she was not amenable to the Immigration Laws of the United States by reason of the fact that she had lived in the Territory of Hawaii before said Territory of Hawaii became an integral part of the United States.

WHEREAS, by the law of the land, the said application for a writ of habeas corpus should have been denied, and the said writ of habeas corpus should have been discharged, and the said applicant and petitioner should have been remanded to be dealt with according to law.

And the aforesaid United States of America now prays that the order and judgment of December 16th, 1915, hereinabove mentioned, may be reversed, annulled, and held for naught, and that it, said United States, may have such other and further relief as may be proper in the premises. [67]

Dated this 31 day of January, A. D. 1916.

(Sgd.) HORACE W. VAUGHAN,
United States Attorney.

Received a copy of the above assignment of errors:

_____,

By Her Attorney,

_____,

[Endorsed]: No. 91. (Title of Court and Cause.) Assignment of Errors. Filed Feb. 15th, 1916. (Sgd.) F. L. Davis, Clerk. [68]

In the United States District Court for the Territory of Hawaii.

In the Matter of the Application of KIMI YAMAMOTO, for a Writ of Habeas Corpus.

Citation on Appeal.

United States of America,—ss.

The President of the United States, to Kimi Yamamoto, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an order allowing an appeal, filed in the clerk's office of the United States District Court for the Territory of Hawaii, wherein the United States of America is appellant, and you, Kimi Yamamoto, are appellee, to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States of America, this 31st day of January, A. D. 1916, and the Independence of the United States the one hundred and fortieth.

CHAS. F. CLEMONS,
Judge U. S. District Court.
Attest: F. L. DAVIS,
Clerk U. S. District Court.

Received a copy of the within citation:

_____.

By Her Attorneys,

_____.

[Endorsed]: No. 91. In the District Court of the United States for the Territory of Hawaii. In the Matter of the Application of Kimi Yamamoto for a Writ of Habeas Corpus. Citation on Appeal. Filed Feb. 15th, 1916. F. L. Davis, Clerk. By ————, Deputy. **[69]**

In the United States District Court for the Territory of Hawaii.

In the Matter of the Application of KIMI YAMAMOTO, for a Writ of Habeas Corpus.

Praecipe for Transcript.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record in this cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

1. Petition for Writ of Habeas Corpus; filed April 13, 1914.
2. Writ of Habeas Corpus; filed April 14, 1914.
3. Return of Richard L. Halsey to Order to Show Cause; filed May 22, 1914.
4. Traverse to the Return of Richard L. Halsey, respondent; filed May 27, 1915.

5. Decision on Demurrer to Return; filed August 2, 1915.
6. Supplementary Decision; filed August 9, 1915.
7. Judgment; filed December 16, 1915.
8. Petition for Appeal; filed February 15, 1916.
9. Order Allowing Appeal; filed February 15, 1916.
10. Assignment of Errors; filed February 15, 1916.
11. Citation on Appeal; filed February 15, 1916.
12. All minute entries in above-entitled cause.
13. This Praecipe. **[70]**

Said transcript to be prepared as required by law and the rules of this Court, and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and filed in the office of the clerk of said Circuit Court of Appeals at San Francisco, before the 15th day of March, A. D. 1916.

THE UNITED STATES OF AMERICA.
By (Sgd.) HORACE W. VAUGHAN,
United States Attorney.

[Endorsed]: No. 91. (Title of Court and Cause.) Praecipe for Transcript. Filed Feb. 15, 1916. (Sgd.) F. L. Davis, Clerk. **[71]**

In the District Court of the United States in and for the District and Territory of Hawaii.

No. 91.

In the Matter of the Petition of KIMI YAMAMOTO, for a Writ of Habeas Corpus.

United States of America,
District of Hawaii,—ss.

Certificate of Clerk, U. S. District Court to Transcript of Record.

I, George R. Clark, Clerk of the District Court of the United States for the Territory of Hawaii, do hereby certify the foregoing pages, numbered from 1 to 72, inclusive, to be a true and complete transcript of the record and proceedings had in said court in the matter of the Petition of Kimi Yamomoto for a writ of habeas corpus, as the same remains of record and on file in my office, and I further certify that I hereto annex the original citation on appeal and three (3) orders extending time to transmit record on appeal in said cause.

I further certify that the cost of the foregoing transcript of record is $15.85, and that said amount has been charged by me in my account against the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 23d day of May, A, D. 1916.

[Seal] GEORGE R. CLARK,
Clerk, United States District Court, Territory of Hawaii. **[72]**

[Endorsed]: No. 2803. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. Kimi Yamamoto, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Hawaii.

Filed June 2, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

No. 2803

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,

vs.

KIMI YAMAMOTO,
Appellee.

BRIEF OF APPELLANT

Upon Appeal From the United States District Court
For the Territory of Hawaii.

JOHN W. PRESTON,
United States Attorney,

CASPER A. ORNBAUN,
Asst. United States Attorney,
Attorneys for Appellant.

Filed this ..... day of October, 1916.

Filed
OCT 14 1916
F. D. Monckton,
Clerk.

FRANK D. MONCKTON, Clerk.

By ..... Deputy Clerk.

No. 2803

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,

vs.

KIMI YAMAMOTO,
Appellee.

BRIEF OF APPELLANT

The facts in this case are practically the same as those in the cases of Sui Joy, Chin Lum and Wong Yuen, now on appeal to this Court.

In this case, as in the other three cases above mentioned, the alien came to the Hawaiian Islands prior to the annexation of those Islands to the United States and now stands charged by the Immigration officials with *practicing prostitution after entry.* (Trans. p. 23.)

To support the charge set out in the warrant of arrest, the Immigration officer presented the statement of Kimi Yamamoto, which is as follows:

"Witness sworn, testifies:

Inspector: Q. What is your name?

Witness—A. Kimi Yamamoto.

Q. How old are you? A. 35.

Q. Where were you born?

A. Nakajima Mura, Niigate Ken, Japan.

Q. When did you first come to Hawaii?

A. Fifteen years ago.

Q. What boat did you come on?

A. Gaelic.

Q. What month? A. October.

Q. Did you come alone?

A. With my husband.

Q. What is his name?

A. Jiunsaku Hirosake.

A. Are you still married to him?

A. I am divorced from him

Q. Where is he now? A. In Japan.

Q. When did he go to Japan?

A. Ten years ago.

Q. Have you married again? A. No.

Q. Have you been living with a man named Okasaki? A. No.

Q. Since you and your husband separated have you had a sweetheart or paramour?

A. No.

Q. Sure of that, are you? A. Yes.

Q. Been living all by yourself all this time?

A. Yes.

Q. What have you been doing for a living?

A. Practicing prostitution.

Q. When did you begin to practice prostitution?

A. Eleven years ago, but not continually, sometimes stop several months.

Q. When was the last time you practiced prostitution?

A. Three months before you made the big raid.

Q. Why did you stop at that time?

A. I was suffering from eye trouble and I was under doctor's care. I heard that you were going to arrest and send prostitutes back to their own country so I stopped.

Q. What have you been doing since you stopped practicing prostitution?

A. I have nothing to do yet because my eyes are not well yet.

Q. What kind of sickness did you have in your eyes?

A. Trachoma and my eyesight is getting dull.

Q. Are you sure that you have not had a sweetheart or paramour? A. No, I have none.

Q. Are you saving your money all for yourself?

A. Well, I saved some money but sent some to Japan to my elder sister and my mother.

Q. Any further statement you wish to make? A. No.

(Notes signed by witness in Japanese only.)
Copy of Japanese characters:

(Signature) KIMI YAMAMOTO.

November 17, 1913.

Certified Correct:

(Sgd.) MAURICE SPALDING,
(Stenographer.)"

To save confusion as to the time that said alien came to the Hawaiian Islands, it was stipulated by counsel that the said Kimi Yamamoto had been a resident of the Hawaiian Islands for "more than five years prior to the 15th day of June, A. D. 1900." The annexation of the Hawaiian Islands took place August 12, 1898.

Questions Determined by the United States District Court in Rendering Its Decision in This Case.

In determining the question in this case as to whether or not the said Kimi Yamamoto was being wrongfully restrained of her liberty, the Court was governed by the same principles of law that caused his Honor to grant writs in the three other cases referred to herein and which are now also on appeal in the above entitled Court.

The decision in this case seems to adopt the same wording in the decisions governing the other three cases above referred to and since the questions involved in this case arose in the other three cases referred to and were determined by the Court in rendering his decision in those cases, the appellant now desires to direct attention to the lower Court's decision, which reads as follows:

> "An alien who came to the Hawaiian Islands previous to their annexation to the United States, and was living there at the time of such annexation, cannot be said to 'have entered the United States' within the meaning of Section 3 of the Act of February 20, 1907, as amended by the Act of March 26, 1910, 36 Stat. 263.

Same—Same—Same—Actual Landing Subject to Statutory Conditions: The provisions of the said statute for the deportation of aliens found 'to be unlawfully within the United States,' presume an actual landing of such aliens, subject to the conditions as to conduct set forth in the statute.

In the first three of the above cases (referring to Wong Yuen, Chin Lum and Kimi Yamamoto) demurrers to the petitions were overruled, whereupon the respondent filed his returns which were demurred to by the petitioners, the fifth ground of demurrer being as follows: 'That it does not appear in the said return that the said Sui Joy is an alien who has ever entered the United States within the meaning of the law herein provided.' In the fourth case, the petitioner filed a traverse to the return of the respondent, in which, among other things, she raised the same point as raised on the fifth ground of the said demurrers, to-wit, that she was not subject to the immigration laws of the United States, having come to the Hawaiian Islands while they were under the jurisdiction of the Republic of Hawaii.

The argument on this point is, briefly, that the petitioners, having come to the Hawaiian Islands previous to annexation, as alleged, and being domiciled residents here at the time of annexation, the statute does not apply to them, such persons although aliens, not having 'entered' the United States.

The following is the immigration rule applying to these cases:

'The application must state facts bringing the alien within one or more of the classes subject to deportation after entry. The proof of

these facts should be the best that can be obtained. The application must be accompanied by a certificate of landing (to be obtained from the immigration officer in charge at the port where landing occurred), or a reason given for its absence, in which case effort should be made to supply the principal items of information mentioned in the blank form provided for such certificates. Telegraphic application may be resorted to only in case of necessity and must state (1) that the usual written application has been made and forwarded by mail, and (2) the substance of the facts and proof therein contained.' Immigration Rule 22, subdivision 2.

The statute under which the petitioners are held is a part of Section 3 of the Act of February 20, 1907, as amended by the Act of March 26, 1910, 36 Stat. 263. It is as follows:

'Any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution *after such alien shall have entered the United States,* or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute, or who is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists, protects, or promises to protect from arrest any prostitute, shall be deemed to be unlawfully within the United States and shall be deported in the manner provided by Sections 20 and 21 of this Act.'

The demurrers are allowed on the fifth ground. It is obvious from a reading of division 2 of Immigration Rule 22, above quoted, that the Commissioner General of Immigration

and the Secretary of Labor, who are authorized by the Immigration Act of February 20, 1907, 34 Stat. 898, Sec. 22, to establish rules for carrying out the provisions of the Act, have construed the Act on the point referred to, as meaning an actual entry or landing in the United States. The said division 2 of the 22d rule, in providing for an application by the immigration officers to the Secretary of Labor for authority to arrest an alien suspected of being unlawfully in the United States, requires, among other things, that the application 'shall be accompanied by a certificate of landing (to be obtained from the immigration officer in charge at the port where the landing occurred), or a reason given for its absence.' Of course, this can refer to nothing else than an actual landing in the United States. This construction is rendered still more positive by the 'certificate of landing,' required by the rule to accompany the application. The blank form provided by the Secretary of Labor and the Commissioner General of Immigration under the authority of the statute, is as follows: 'Form 564.

Certificate as to landing of Alien
(To accompany application for warrant of arrest).

Department of Commerce and Labor.

Immigration Service.

.....190.....

I hereby certify that I have examined the records of the immigrant station at..... with reference to the record of the landing or entry of ....., an alien, and that the following facts relative to such landing or entry are disclosed by said records.

(1) Name of alien,.....; age,.....; sex,.....

(2) Race,.....; country whence alien came, ...

(3) Exact date and port of arrival in the United States,.....

(4) Name of vessel and line,.....
(If alien arrived via Canada or Mexico, so state.)

(5) Destination,.....

(6) Occupation,.....; money brought, $.....

(7) By whom passage paid,.....

(8) Whether ever in United States before, ...

(9) Whether inspected at time of arrival, ...

.....

(If held for special inquiry, so state.)

Remarks: .....

.....

(Signature) .....
(Official title) .....'

Such construction, being authoritative and official, is entitled to great weight. Endlich's Interpretation of Statutes, Sec. 357.

Counsel in the Sui Joy, Ching Lum and Wong Yuen cases, set forth somewhat exhaustively the constitutional argument that Congress derived its power to legislate as to immigrant aliens after being admitted, solely from section 8 of the first article of the Constitution of the United States, which gives it the power 'to regulate commerce with foreign nations.' Quoting from the brief, 'the theory is that commerce with foreign nations includes not only an exchange of commodities, but also the importation or incoming of passengers. The

proposition that Congress has no power to regulate the affairs of individual persons in the United States except as incidental to some one of the powers expressly given to it by the Constitution, is fundamental.' It follows, therefore, that whereas Congress may permit an alien immigrant to land under certain conditions as to conduct thereafter while in the country, involving forcible deportation upon his failure to conform to such conditions, it may not deport alien residents for similar conduct, with whom there has been no such conditional entry into the United States. In other words, an alien resident of the United States in regard to whom there was no condition as to his conduct during his residence, that was made the basis of his landing or entry into the country by a then existing statute, is not within the scope of Section 3 of the Immigration Act of February 20, 1907, as amended by the Act of March 26, 1910. Plainly the law does not affect persons who have not *entered* the United States previous to doing the acts charged. These petitioners all claim to have been living in Hawaii before and at the time of annexation. In matters of immigration the word *enter* has not acquired a technical meaning. It would appear that these cases might well have been disposed of on their inception, on the ground that the statute is too clear to require interpretation.

> *Absoluta sententia expositore indiget.'* Potter's Dwarris, 128; Vattel's first rule *id.* 126.

As the ruling on this ground of the demurrer disposes of the cases, the Court need not consider the other grounds.

It is not clear whether there remains a question of fact to be decided. The returns in the first three cases do not specifically deny the

allegations of residence in Hawaii before annexation, but make a general denial of all further allegations and averments of said petitions necessary to be denied. The return in the fourth case accepts the allegation of the petition in that case that the petitioner arrived in Hawaii in the year 1897, as correct. She (Kimi Yamamoto) is, therefore, under the foregoing conclusions, entitled to her discharge under the writ, which is hereby ordered.

If the respondent desires to contest the allegations of residence in Hawaii, in the three first cases, an opportunity will be given, otherwise such petitioners will be discharged.

(Sgd.) SANFORD B. DOLE,
Judge of the United States District Court for the Territory of Hawaii."

Supplementary Decision.

On the afternoon of the day the foregoing decision was given in open court, counsel on both sides filed the following stipulation:

'It is hereby stipulated and agreed by and between the United States of America through J. W. Thompson, its Assistant District Attorney of the District and Territory of Hawaii, and Sui Joy, Ching Lum and Wong Yuen, by their attorneys, Thompson & Milverton, that each of said petitioners were residents of the Hawaiian Islands for a period of more than five (5) years prior to the 15th day of June, A. D. 1900.'

By this stipulation it would appear that the said petitioners were resident here for over three years before the annexation of Hawaii to the United States, which took place August 12, 1898. The Court was thereupon prepared to order the discharge of the petitioners, accord-

ing to the conclusions of the foregoing decision, but before such order was effectuated the Assistant District Attorney, acting for the respondent, moved the Court for an opportunity of showing that the petitioners severally visited China after annexation and returned again to Hawaii.

Such motion must be denied, inasmuch as the cases contain no pleadings which would form a basis for such testimony,—as there is no showing that such information is newly discovered and as such information, if it exists, obviously has been, during the pendency of these proceedings, within the reach of the respondent.

The writs are made absolute and the petitioners discharged.

Honolulu, T. H., August 4, 1915.

(Sgd.) SANFORD B. DOLE,
Judge of the United States District Court for the Territory of Hawaii."

Argument.

From a reading of the foregoing, it can readily be seen that the only difference between this case and the other three cases to which the Court's attention has been so frequently called is this: Kimi Yamamoto, the appellee in the above entitled cause, was arrested upon a charge of *practicing prostitution after entry into the United States*, while in the other three cases, the said aliens were also charged with receiving, sharing in, and deriving benefit from the earnings of prostitutes. Therefore, the principal question involved in this case is whether or not the said appellee entered the United States,

within the meaning of the Immigration Act of February 20, 1907, as amended by the Acts of March 26, 1910, and March 4, 1913.

It does not seem reasonable that Congress would enact a law giving certain aliens rights and denying those same rights to other aliens when no real cause for such discrimination exists. In other words, why should Congress enact a law which would permit aliens who perchanced to be residents of the Hawaiian Islands prior to August 12, 1898 (date of annexation to the United States) and at the same time deprive aliens of those rights who entered those Hawaiian Islands subsequent to this date?

The charge against the appellee is one of the most serious charges provided for in the Immigration Act, and as evidence of this, it will be noted that an alien who is found practicing prostitution may be arrested and deported at any time while the deportation of other aliens must come within the three years' period, as provided for in Sections 20 and 21 of said Immigration Act (*Zakonaite* vs. *Wolf,* 226 U. S. 272; *Bugazurtz* vs. *Adams,* 228 U. S. 584).

The only reasonable interpretation that can be placed upon Section 3 of the Immigration Act, which refers to the particular charge against appellee, is that said appellee entered the United States at the same time that the Hawaiian Islands entered the United States.

Consequently, and in conclusion, the government's position, briefly stated, is this: That inasmuch as appellee has admitted that she practiced prostitution since the Hawaiian Islands have become a part of the United States, and since she entered the United States, as provided for in Section 3 of said Immigration Act, at the same time that the Hawaiian Islands entered the United States, she was properly within the jurisdiction of the Immigration officials, and the lower Court erred in holding that an alien who came to the Hawaiian Islands previous to said annexation and who was living there at the time of said annexation, can not be said to have entered the United States within the meaning of Section 3 of the Act of February 20, 1907, as amended by the Act of March 26, 1910, and therefore not subject to deportation.

Respectfully submitted,

CASPER A. ORNBAUN,
United States Attorney,

JOHN W. PRESTON,
Asst. United States Attorney,

Attorneys for Appellant.

No. 2804

United States

Circuit Court of Appeals

For the Ninth Circuit.

In the Matter of DAVID JACOBS and ISAAC JACOBS, Copartners Doing Business as JACOBS BROS.,

Bankrupts.

DAVID JACOBS and ISAAC JACOBS,

Petitioners,

vs.

S. T. HILLS, as Trustee of the Estate of DAVID JACOBS and ISAAC JACOBS, Doing Business as JACOBS BROS., Bankrupts,

Respondent.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the Western District of Washington, Northern Division.

Filed
JUL 1 - 1916
F. D. Monckton,
Clerk.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

No. 2804

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Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States Circuit Court of Appeals in and for the Ninth Circuit.

No. ——.

In the Matter of DAVID JACOBS and ISAAC JACOBS, Copartners Doing Business as JACOBS BROS.,

Bankrupts.

DAVID JACOBS and ISAAC JACOBS,

Petitioners,

vs.

S. T. HILLS, as Trustee of the Estate of DAVID JACOBS and ISAAC JACOBS, Doing Business as JACOBS BROS., Bankrupts,

Respondent.

Notice of Filing of Petition for Revision.

To S. T. HILLS, Trustee of the Estate of David Jacobs and Isaac Jacobs, Doing Business as JACOBS BROS., Bankrupts, Respondent, and to WETTRICK, ANDERSON & WETTRICK, and HUDSON & MADISON, His Attorneys:

You, and each of you, are hereby notified that we are this day sending, by mail, to the clerk of the Circuit Court of Appeals, a petition to review and revise the order of the District Judge requiring the said bankrupts to turn over to the said S. T. Hills, as trustee, goods, wares and merchandise of the value of thirty-one hundred eighty-nine ($3189.00) dollars, as more particularly set forth in the order of the Court entered on the 17th day of May, 1916,

with the request to file said petition.

WALTER SCHAFFNER,
ROMAINE & ABRAMS,
Attorneys for Petitioners.

Service of copy of the above notice and petition therein mentioned acknowledged this 31st day of May, 1916.

WETTRICK, ANDERSON & WETTRICK,
HUDSON & MADISON,
Attorneys for Trustee.

[Endorsed]: Original. No. 2804. In the Circuit Court of Appeals of the United States for the Ninth Circuit. In the Matter of David Jacobs et al., Doing Business as Jacobs Bros., Bankrupts, David Jacobs and Isaac Jacobs, Petitioners, vs. S. T. Hills as Trustee of Above Estate, Respondent. Notice. Filed Jun. 3, 1916. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals in and for the Ninth Circuit.

No. ——.

In the Matter of DAVID JACOBS and ISAAC JACOBS, Copartners Doing Business as JACOBS BROS.,
Bankrupts.

DAVID JACOBS and ISAAC JACOBS,
Petitioners,

vs.

S. T. HILLS, as Trustee of the Estate of DAVID JACOBS and ISAAC JACOBS, Doing Business as JACOBS BROS., Bankrupts,
Respondent.

Petition for Revision.

To the Honorable Judges of the United States Circuit Court of Appeals in and for the Ninth Circuit:

Your petitioners David Jacobs and Isaac Jacobs, respectively represent:

I.

That on the 13th day of June, 1915, a petition was filed in the District Court of the United States for the Western District of Washington, Northern Divison, praying that your petitioners, as copartners doing business under the firm name and style of Jacobs Bros., might be adjudged bankrupts within the purview of the Acts of Congress relating to bankruptcy, and that such proceedings were had thereon that on the 13th day of July, 1915, orders were duly made and entered in said cause adjudging your petitioners to be such bankrupts and referring the said cause for further proceedings to the Honorable J. F. Moore, one of the referees in bankruptcy of said Court.

II.

That thereafter, at a meeting of creditors regularly and duly called before the said referee and held on the 2d day of August, 1915, one S. T. Hills was appointed as trustee of the estate of your petitioners, as copartners as aforesaid, and thereafter duly qualified as such trustee and has ever since said time been acting as such.

III.

On the 5th day of October, 1915, the said S. T.

Hills, as trustee as aforesaid, filed a petition before the said referee praying that an order might be entered requiring your petitioners to turn over to the said trustee goods, wares and merchandise of the value of Thirty-one Hundred Eighty-nine ($3189.00) Dollars. That on said date there was issued, without notice to your petitioners, an order requiring your petitioners to show cause why that petition should not be granted, which said order was returnable on the 13th day of October, 1915.

IV.

That on the said last-mentioned date, your petitioners appeared before the said referee in person and by their attorneys, and moved that the said petition of the trustee be made more definite and certain, and that certain particulars be more fully set forth in the written motion then filed with the said referee, and also that the third paragraph be stricken. That thereupon the referee, having heard the argument of counsel, denied the first of said motions and sustained the second. That to the ruling of the said referee, denying the said motion, your petitioners then and there excepted.

V.

That thereupon hearings were had on said petition and on the 2d day of January, 1916, the said referee entered an order directing your petitioners to turn over to the said trustee goods, wares and merchandise of the approximate value of Thirty-one Hundred Eighty-nine ($3189.00) Dollars.

VI.

That thereafter petitions were duly filed by both, your petitioners and the said trustee, praying that the said proceedings might be certified to the District Judge and that the same might, by him, be reviewed, and that thereafter a hearing was had before the said District Judge, and on the 15th day of May, 1916, the said District Judge entered findings of fact and conclusions of law, and on the 17th day of May, 1916, made and entered his order requiring your petitioners to turn over and surrender to the trustee, within twenty days, goods, wares, and merchandise of the value of Thirty-one Hundred Eighty-nine ($3189.00) Dollars.

VII.

Your petitioners further represent that in the said order of the District Judge entered on the 17th day of May, 1916, and in the records and proceedings aforesaid, there is manifest error in this:

1. That finding No. 9 was wholly immaterial and the facts therein stated were not involved in any of the issues raised by the said petition.

2. That finding No. 10 was wholly immaterial and the facts therein stated were not involved in any of the issues raised by the said petition.

3. That that part of finding No. 11 which finds that your petitioners now have property of the value of Thirty-one hundred eighty-nine ($3189.00) Dollars belonging to their estate in bankruptcy, is wholly immaterial and not involved in any of the issues raised by said petition.

4. That that portion of said finding No. 11 which

finds that your petitioners now conceal and withhold from the trustee the said property is wholly immaterial and not involved in any of the issues raised by said petition.

5. That that part of finding No. 11 which finds that the Court is satisfied beyond all reasonable doubt of the present ability of your petitioners, and each of them, to deliver said assets to the trustee, is immaterial and not involved in any of the issues raised by the said petition, and is without warrant of law.

6. That in none of the Findings of Fact is the property, claimed to be withheld, specified.

7. That that portion of finding No. 11 which finds that the Court is satisfied beyond all reasonable doubt of the matters and things therein set forth is immaterial and without warrant of law.

8. That neither of the conclusions of law made by the said District Judge are justified by the findings of fact herein.

9. That the order entered by the District Judge is not justified by the findings of fact herein.

10. That the said District Judge should have found that the trustee was not entitled to the relief sought by him, and should have denied and dismissed the said petition.

VIII.

That your petitioners present and file herewith a duly certified copy of so much of the records of the proceedings in the said bankruptcy matter as pertains to the matters and things hereinbefore set forth.

WHEREFORE, your petitioners pray that an order may be entered requiring the said S. T. Hills, as trustee of the estate of your petitioners as aforesaid, to answer to this petition within some time to be fixed by the Court, and that this petition and said answer may be heard by this Court, and that at the time of the said hearing, the action of the said District Court may be reviewed and revised and an order entered reversing the order of the said District Judge.

Your petitioners will ever pray etc.

DAVID JACOBS,
ISAAC JACOBS,
Copartners Doing Business as Jacobs Bros.
WALTER SCHAFFNER.
ROMAINE & ABRAMS,
Attorneys for Petitioners.

State of Washington,
County of Whatcom,—ss.

David Jacobs and Isaac Jacobs, each for himself, being first duly sworn, on oath deposes and says:

I am one of the petitioners in and have read the foregoing petition by me subscribed and know the contents thereof and the same is true.

DAVID JACOBS.
ISAAC JACOBS.

Subscribed and sworn to before me this 25th day of May, 1916.

[Seal] J. W. HEALY,
Notary Public in and for the State of Washington,
Residing at Bellingham.

[Endorsed]: Original. No. ——. In the Circuit Court of the United States for the Ninth Circuit. In the Matter of David Jacobs and Isaac Jacobs, Copartners Doing Business as Jacobs Bros., Bankrupts, David Jacobs and Isaac Jacobs, Petitioners, vs. S. T. Hills, as Trustee of Above Estate, Respondent. Petition.

No. 2804

United States

Circuit Court of Appeals

For the Ninth Circuit.

DAVID JACOBS and ISAAC JACOBS,

Petitioners,

vs.

S. T. HILLS, as Trustee in Bankruptcy of the Estate of DAVID JACOBS and ISAAC JACOBS, Copartners Doing Business as JACOBS BROS.,

Respondent.

In the Matter of DAVID JACOBS and ISAAC JACOBS, Copartners Doing Business as JACOBS BROS.,

Bankrupts.

TRANSCRIPT OF RECORD IN SUPPORT OF PETITION FOR REVISION

Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the Western District of Washington, Northern Division.

Names and Addresses of Counsel.

WALTER, SCHAFFNER, Esq.,
Attorney for Petitioner, 531 Lyon Building, Seattle, Washington.

ROMAINE & ABRAMS,
Attorneys for Petitioner, Bellingham, Washington,

WETTRICK, ANDERSON & WETTRICK,
Attorneys for Respondent, Central Building, Seattle, Washington.

HUDSON & MADISON,
Attorneys for Respondent, Bellingham, Washington. [1*]

In the United States District Court for the Western District of Washington, Northern Division.

No. 56.

Petition of Trustee for Delivery of Assets.

In the Matter of DAVID JACOBS and ISAAC JACOBS, Copartners, Doing Business as JACOBS BROS.,

Bankrupts.

Comes now S. T. Hills, Trustee herein, and respectively shows the Court:

I.

That on the 2d day of June, 1915, the above-named bankrupts were the owners and possessors of a certain retail clothing, men's furnishings and haber-

*Page number appearing at foot of page of original certified Record.

dashery store at Bellingham, Washington; an itemized list or inventory of the stock of goods, wares, merchandise and fixtures therein contained on June 2, 1915, has been filed herein and marked exhibit "A"; that said merchandise was of the value of Eighty-six Hundred Seventy-nine and 99/100 Dollars ($8679.99) (the fixtures, 3000.00; book account, $2096), invoiced at cost price; that said store was operated by said bankrupts, for a period of five days succeeding the date of said inventory, *i. e.,* until June 7th, 1915; that said bankrupts during the said five days sold there from merchandise not exceeding Four Hundred Dollars ($400.00) in value; that thereupon the sheriff of Whatcom County seized and took possession of said store and merchandise and fixtures therein contained under writ of attachment on the 7th day of June, 1915, and continued said business until July 13th, 1915, selling therefrom at retail, at regular retail prices, merchandise of the value of Six Hundred Eighty-seven and 53/100 Dollars ($687.53), thereby reducing said stock not to exceed Five Hundred Dollars ($500.00) of its cost value; that thereupon **[2]** an adjudication of bankruptcy was made on July 13, 1915, and a receiver of the above-entitled estate was appointed in the person of Geo. A. Hansen, who immediately qualified, took charge of the estate and acted as receiver until the 2d day of August, 1915; that thereafter and in the due course of the bankruptcy proceedings herein, on the 2d day of Aug., 1915, S. T. Hills was duly elected trustee, and qualified as said

trustee, and is now the acting trustee of the above-named bankrupt estate.

II.

That the trustee made an inventory of the goods, wares and merchandise of the estate of the above-named bankrupts contained in said store of said bankrupts; an itemized list or inventory of said goods, wares and merchandise has been on file herein and marked Exhibit "B"; that the value of said merchandise was Forty-five Hundred Ninety and 91/100 Dollars ($4590.91), invoiced at cost price and in exactly the same manner as the merchandise was invoiced in Exhibit "A"; that goods, wares and merchandise of the value of Thirty-one Hundred Eighty-nine and 08/100 Dollars ($3189.08) have been wrongfully and unlawfully and fraudulently taken, removed and concealed from said store by the said David Jacobs and Isaac Jacobs, and that the said David Jacobs and Isaac Jacobs have in their possession and under their control goods, wares and merchandise of which the trustee herein is the owner and is entitled to the possession thereof.

III.

That said wrongful, unlawful and fraudulent removal and concealment of said merchandise by said bankrupts was part and parcel of an unlawful and fraudulent conspiracy upon the part of said bankrupts to cheat and defraud their creditors extending over a period of at least one year last past; that pursuant to said fraudulent conspiracy said bankrupts have operated said store in an extravagent manner calculated to dissipate the assets and have

sold considerable **[3]** merchandise for less than its cost value and for a song, and for the purpose of inducing wholesale merchants and jobbers to sell and deliver merchandise to them, and with the intent to deceive and defraud said vendors have made false financial statements in writing, and have delivered same to different mercantile establishments including R. G. Dun Co., with the result that many and diverse wholesalers and jobbers have parted with their merchandise relying upon said false and fraudulent financial statements.

WHEREFORE, petitioner as trustee herein respectfully prays the Court for an order directing the said David Jacobs and said Isaac Jacobs, and each of them, to turn over and deliver forthwith to the petitioner the said goods, wares and merchandise so concealed and withheld, and for such other and further relief as may to the court appear just and proper in the premises.

S. T. HILLS,
Petitioner.

State of Washington,
County of King,—ss.

S. T. Hills, being first duly sworn, on oath deposes and says: That, I am trustee herein, have read the foregoing instrument, know the contents thereof and believe the same to be true.

S. T. HILLS,

Subscribed and sworn to before me this 20 day of September, 1915.

[Seal] NELSON E. ANDERSON.
Notary Public in and for the State of Washington,
Residing at Seattle. **[4]**

[Endorsed]: Petition of Trustee for Delivery of Assets. Filed the 5th day of October, 1915, at 2:00 P. M. J. F. Moore, Referee. [5]

In the United States District Court for the Western District of Washington, Northern Division.

No. 56—IN BANKRUPTCY.

In the Matter of DAVID JACOBS and ISAAC JACOBS, Copartners, Doing Business as JACOBS BROTHERS,

Bankrupts.

Findings of Referee in Bankruptcy and Order for Delivery of Property and Accounting.

On the 5th day of October, 1915, the trustee of the above-entitled bankruptcy filed his petition before me, praying for a hearing and order directing and requiring the above-named bankrupts, David Jacobs and Isaac Jacobs, to account for and deliver certain goods, wares and merchandise to the petitioner, which said goods, wares and merchandise were alleged by the petitioner to be fraudulently and secretly carried away or sold by the bankrupts and unaccounted for by the bankrupts.

That the trustee is the owner of and entitled to the possession of said goods, wares and merchandise for the benefit of the creditors of said estate.

Notice of filing said petition was personally served with copy of the petition on each of the bankrupts at Bellingham, said District, on the 6th day of October, 1915, and pursuant thereto hearing was had before me on the 13th day of October, 1915, com-

mencing at 2 o'clock, P. M., the trustee appearing in person and by his attorneys, Nelson R. Anderson and E. C. Hudson, the bankrupts appearing in person and by Curtis E. Abrams, of Romaine & Abrams, their attorney;

The bankrupts by their counsel filed with me and submitted two separate motions; one to make the petition (paragraphs 1 and 11), more definite and specific in certain particulars therein mentioned; and the other to strike the third paragraph of the petition, on the ground that the allegations therein contained presented no pertinant or material issue on the petition. **[6]**

I denied the first motion and sustained the other of said motions; to which decisions and rulings the respective counsel duly excepted.

Various witnesses were produced, sworn and testified as well as the trustee and the bankrupts on said hearing.

Said matters were presented by counsel for the respective parties by oral argument and by written briefs filed with me.

After reading and considering all the testimony offered and the arguments and written briefs filed herein and all the circumstances surrounding the parties and connected with said cause;

I find from a preponderance of the evidence and the circumstances of the case, that the bankrupts had in their possession and under their control in their place of business at Bellingham, said District, goods, wares and merchandise, belonging to their estate, on the 31st day of May, 1915, which inven-

toried at the cost price the sum of $8,679.99.

That said bankrupts, David Jacobs and Isaac Jacobs, bankrupts aforesaid, have secreted, have in their possession of said goods, wares and merchandise, so inventoried, and fraudulently and wrongfully retain and withhold the same from the custody of the trustee to the approximate*ly* value of $3,189.00 or more; and fail, refuse and neglect to in any manner account for the same or for the proceeds of any sales thereof;

And, fail, refuse and neglect to render any satisfactory or any account thereof or therefor.

I find from all the testimony and circumstances appearing in this case that the bankrupts conducted their said business in such manner as to indicate a well-defined purpose to defraud their creditors.

I, therefore, conclude that it is proper and expedient to make an order according to the prayer of the petition and according to the foregoing findings.

IT IS THEREFORE, ORDERED, that David Jacobs and Isaac Jacobs, the above-named bankrupts, surrender, and deliver to S. T. Hills, trustee in bankruptcy herein, the goods, wares, and merchandise belonging to said estate of the approximate value of $3,189.00, now in the possession or under the control of said bankrupts, or account to said trustee in the sum of approximately $3,189.00, the value thereof, within and on or before the 10th day of February, 1916.

Made and signed on this 22d day of January, A. D. 1916.

(Signed) J. F. MOORE,
Referee in Bankruptcy. [7]

[Endorsed]: Order for Delivery of Property and Accounting. Filed the 22d day of Jany., 1916, at 3 o'clock P. M. J. F. Moore, Referee. [8]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 56.

In the Matter of DAVID JACOBS and ISAAC JACOBS, Copartners Doing Business as JACOBS BROS.,

Bankrupts.

Petition of Bankrupts for Review of Orders of Referee.

To the Honorable J. F. MOORE, Referee in Bankruptcy for the Above-entitled District and Division, at Bellingham, Therein.

Your petitioners, David Jacobs and Isaac Jacobs, copartners doing business as Jacobs Bros. respectfully represent, show and petition:

I.

That your petitioners were adjudicated bankrupts on July 13th, A. D. 1915, and that said proceeding was referred immediately thereafter to you for further proceedings therein in conformity with the Acts of Congress relating to bankruptcy.

II.

That on October 5th, 1915, the trustee of the estate of said bankrupts, filed in this proceeding his petition for the return and delivery of property of the alleged value of Three Thousand One Hundred

Eighty-nine and Four Hundredths ($3,189.04) Dollars; that thereafter and after hearing had in the matter of said petition, your Honor, on the 22d day of January, A. D. 1916, made and entered an order therein directing said Bankrupts to deliver property to said trustee of the approximate value of Three Thousand One Hundred Eighty-nine and Four Hundredths ($3,189.04) Dollars, which said order is now **[9]** on file in the records of said proceeding and reference to which is made as though herein fully set forth or hereto attached.

III.

That thereafter and on the 11th day of February, A. D. 1916, your Honor entered in said proceeding an order overruling and denying a petition presented by said bankrupts for a rehearing upon said original petition for the delivery and return of property aforesaid, which said order of February 11th, 1916, is in the files of said proceeding, and to which reference is made as though herein set forth or hereto attached.

IV.

That said order of January 22d, A. D. 1916, aforesaid was and is erroneous, in that same was not supported by a preponderance of evidence or any evidence sufficient to justify the making and entry of said order, and that said order, and the whole thereof, is contrary to the law in the premises governing said matter; that the making and entry of said order is contrary to the evidence adduced at said hearing and to the law governing said matter, and that said bankrupts, and each of them, have

suffered and will suffer great injury therefrom; that said order of February 11th, A. D. 1916, was and is erroneous, in that it is contrary to the law in the premises and contrary to the affidavit evidence produced in support of said petition for rehearing, upon which said order was based, and is a substantial denial to said bankrupts, and each of them, of the right to have a full and complete hearing, and to present all the evidence in support of their contentions available in said matter, [10] and that same has wrought great injury to said bankrupts.

WHEREFORE, your petitioners, the undersigned bankrupts, feeling aggrieved because of such orders, pray that same may be reviewed as provided in the bankruptcy law of 1898 and the general order XXVII by the Judge of the District Court of the United States, and that a full transcript of all files, records and the evidence in said proceeding be presented with this petition to said Court.

Dated this 18th day of February, A. D. 1916.

ROMAINE & ABRAMS,
Attorneys for Bankrupts.

United States of America,
State of Washington,
County of Whatcom,—ss.

Isaac Jacobs, being first duly sworn, on oath says: That he is one of the bankrupts named and described in the foregoing petition; that he has read the same, knows the contents thereof, and that the same is true.

ISAAC JACOBS.

Subscribed and sworn to before me this 18th day of February, A. D. 1916.

[Seal] C. E. ABRAMS,
Notary Public in and for the State of Washington,
Residing at Bellingham therein. [11]

Due service of the within petition acknowledged and a true copy thereof received at Bellingham, Washington, this 18th day of February, 1916.

HUDSON & MADISON,
WETTRICK, ANDERSON & WETTRICK,
Attorneys for Trustee.

[Indorsed]: Petition for Review of Orders of Referee. Filed in the United States District Court, Western District of Washington. Feb. 25, 1916. Frank L. Crosby, Clerk. By ————, Deputy. [12]

In the United States District Court for the Western District of Washington, Northern Division.

No. 56.

In the Matter of DAVID JACOBS and ISAAC JACOBS, Copartners, Doing Business as JACOBS BROS.,

Bankrupts.

Petition of Trustee for Review of Orders of Referee.

Comes now S. T. Hills, trustee herein, and respectfully shows the Court:

I.

On the 5th day of October, 1915, trustee herein filed a petition with the Honorable J. F. Moore, one of the

referees of the above-entitled court, sitting at Bellingham, Washington, to recover from the bankrupts concealed merchandise belonging to the estate, valued at $3,189.08.

The bankrupts filed no answer, but moved that paragraphs I and II be made more definite and certain, which was denied. Bankrupts excepted.

Bankrupts moved that paragraph III be stricken, which was granted. The trustee excepted. The referee in his findings, however, found that "the bankrupts conducted their said business in such manner as to indicate a well-defined purpose to defraud their creditors."

II.

The allegations of the trustee's petition were sustained by uncontradicted evidence before the Referee, as follows:

February 3, 1915 (S. F. 25), Jacobs Bros., had a net worth of $19,784.15 (S. F. 36).

March 15, 1915, Jacobs Bros., had on February 3, 1915, a stock [13] of merchandise valued at $17,642.40 and a net worth of $19,784.15, according to a financial statement given R. G. Dun & Co. (Trustee's Ex. "B").

June 2, 1915, an *exact* inventory of the merchandise (S. F. 117, 118) was taken by a representative of the creditors (C. P. Stevens), who had from 12 to 15 years' experience in the general mercantile business (S. F. 107), with the consent of Jacobs Bros. (S. F. 108), assisted by Carrington, an employee of Jacobs Bros., an experienced man (S. F. 25), who had taken previous inventories for the bankrupts

(S. F. 112), in whom they had confidence (S. F. 25), and also assisted to some extent by David Jacobs, one of the bankrupts (S. F. 108, 115). Both Stevens and Carrington counted the quantities and both took down the cost price (S. F. 109, 115, 116). The cost mark was the cost mark of the bankrupts. The bankrupts were present at the time (S. F. 115). The inventory is on file, marked Trustee's Exhibit "C," and shows merchandise valued at $8,679.99.

June 7, 1915, the sheriff of Whatcom County attached the business and placed in charge Deputy Sheriff William Gibson (S. F. 22). This deputy acted as receiver, conducted the business as a going concern, and employed the bankrupts as clerks, all by consent of all parties until July 14, 1915 (Stipulation).

During his administration the sales amounted to $687.53 (S. F. 24).

Q. "The stock on the 14th (July) was the same stock that you received on the 5th (June), with the exception of these sales that were made?"

A. "So far as I can tell." (S. F. 24, 25.)

No goods were wrongfully taken out during that time. (S. F. 25.) Nor did the bankrupts intimate that any goods were taken out during the interim. (S. F. 26.) [14]

July 13, 1915, Joseph A. Hansen was appointed receiver by the bankruptcy court (S. F. 27). The receiver inspected the premises two or three times a day (S. F. 128).

One morning the receiver made his usual inspection; later, at about 10 A. M., a policeman advised him

that the front door was unlocked. He immediately went through the premises and saw that everything was all right; that nothing had been moved out; that the door was locked when he entered to make his inspection *earlier* in the morning (S. F. 28).

(Q.) "The stock which you received from the sheriff, was that the same stock that you turned over to Mr. Hills, trustee?"

(A.) "Yes" (S. F. 129).

August 2, 1915, S. T. Hills was elected trustee.

The trustee personally looked at the stock shortly afterward, taking possession through his attorney, Mr. Hudson, who received the keys (S. F. 129).

The trustee took the inventory made on June 2d, and went through the stock with a prospective buyer. They immediately noticed a vast discrepancy in quantities and could go no further (S. F. 130). This discrepancy was substantiated by the taking of a SECOND inventory on August 16, 1915. This inventory was taken by the same Stevens, assisted by the appraisers appointed by the bankruptcy court, who were experienced men (S. F. 119, 122). The inventory was taken in exactly the same manner as the first (S. F. 110). Both were *exact* inventories (S. F. 117, 118).

The June 2d inventory showed merchandise, $8,679.99; the August 16th inventory showed merchandise, $4,590.91; a *shortage of merchandise* of $3,189.08 after making due allowance for sales of Jacobs Bros., between June 2d and June 5th in the sum of $400.00 (S. F. 134) and an allowance of $500.00 (cost price) made for sales [15] kept and

recorded by the sheriff (S. F. 123, 124).

The August 16th inventory was not taken immediately upon the qualification of the trustee on August 2d for the reason that the making of the inventory was an expensive work and the first was deemed sufficient (S. F. 134, 135).

Schedules filed by the bankrupt show merchandise, $8,000.00; fixtures, $3,000.00; accounts, $2,000.00; equity real property, $200.00; or a total of $13,200.00; liabilities for merchandise, $17,039.29, and a total liability of $22,676.77.

During the whole time the store was under lock and key (S. F. 135). The rear of the store was fastened by an iron shutter door with the lever crossing it on the inside, and by a frame door inside of that (S. F. 25, 27, 135, 136).

SUMMARY.

	Merchandise.	Net Worth.	
Feb. 3, 1915	$	Feb. 3,	$19,784.15
June 2, 1915	8,679.99		
Shortage			
Feb. 3, 1915			
August 16, 1915	4,590.91		
Total Shortage			
Shortage accounted for			
Shortage unaccounted for..			
Feb. 3, 1915			
Schedules	18,000.00	Schedules:	
		Debts	22,687.77
Total Shortage		Assets	13,200.00
Shortage accounted for by sales	900.00		
Shortage unaccounted for..			
June 2, 1915	8,679.99		
Aug. 16, 1915	4,590.91	Excess liabilities.	9,487.77
Shortage	4,089.08		
Shortage accounted for by sales		Total shrinkage	$29,271.92
Bankrupts $400.00			
Sheriff 500.00	900.00		
Shortage unaccounted for.	$ 3,189.08		

The bankrupts denied taking or concealing assets (S. F. 140,——), but offered no explanation of any kind whatsoever. They confessed they could not explain the shrinkage of a net worth of $17,000.00 on February 3, 1915, to an actual deficit of over $8,000.00 at the time of bankruptcy. The record shows: **[16]**

(Q.) "What became of the $17,000.00?"

(A.) "I don't know."

(Q.) "You can't imagine what became of it?"

(A.) "No" (S. F. 36).

They confessed that they could not account how the stock was reduced from 17,000 in February to 8,000 on June 2d (S. F. 48).

The bankrupts generally answered questions relating to the business with "I don't know," "I don't remember," "I suppose so," "I presume so," "I don't care."

Isaac Jacobs testified that the inventory of February 3, 1915, was strictly guesswork (S. F. 5); that it was a rough guess (S. F. 5); that he couldn't remember what his liabilities were at any time during 1915 (S. F. 7); that he made no great effort to find out what his stock was because he didn't care (S. F. 23); that he guessed at the value of the fixtures in the sum of $3,500.00 (S. F. 34, 35); that he didn't care if people relied upon his figures or not (S. F. 35).

The bankrupts testified they didn't know what the business amounted to per year during the last few years (S. F. 36, 37); that they kept no records of sales (S. F. 17, 37); never kept an expense account (S. F. 37); destroyed cancelled checks (S. F. 49); kept no record of money taken out for their indi-

vidual use (S. F. 37); kept no stock book (S. F. 53); no correspondence (S. F. 46); no books at all except a ledger (S. F. 55); didn't know the sales between June 2d and June 7th (S. F. 136); and did not keep the ledger up during recent times (S. F. 55); that he kept no record and hadn't any idea; nor could he remember whether sales were light or not (S. F. 137).

The record further disclosed that the bankrupt perjured himself in his schedules by listing his merchandise at $8,000.00 when he did not know how much it amounted to and did not exercise his [17] independent judgment of same (S. F. 64), and again by listing his real estate equity at $200.00 and admitting that there was no equity, and again by testifying that he paid his father $1,000.00 in two installment payments when his father testified that the 1,000 was paid back in small payments of 25 and $50.00.

The bankrupt was brazen and contemptuous in saying he would have put his merchandise in at $10,000.00 if Stevens' first inventory had shown $10,000.00; that he would have put it in at zero if Stevens' inventory had been zero (S. F. 64).

The bankrupt also made a false financial statement, thereby offending against the criminal statutes and criminal code of the State of Washington, and the Bankruptcy Act. The statement issued to R. G. Dun & Co., on March 15, 1915, placed a net equity valuation on the real property of $9,000.00, and upon examination in open court bankrupt admitted that there was no equity in said estate and in his schedule placed a valuation thereon of $200.00. The bank-

rupt admitted that the property was not worth now as much as when he purchased it for $6,050 (S. F. 57).

They guessed the fixtures were worth $3,500.00 altho they bought them by trading $1,000.00 worth of shoes (S. F. 81).

The bankrupts admitted that they knew that the statement would be circularized (S. F. 28); that they didn't care if creditors would rely upon their guesses (S. F. 35).

The Dun reports were distributed and furnished to different cities (S. F. 103). Inquiries and replies were made from the home office (S. F. 104), to persons who were seeking to sell them goods (S. F. 105), or at least to persons who were anxious to know their financial condition (S. F. 106), either for mortgages, loans or sales of merchandise (S. F. 106). Hardeman Hat Company relied upon said financial statement, and the Dun report decided them to pass [18] the credit and was the controlling influence in determining credit actually extended said bankrupts (Deposition, pages 2 and 3).

The record discloses the usual charities of bankrupts to their relatives. A niece was given $300.00 cash and checks for $400.00 (Trustee's Exhibit ——) in small payments (S. F. 78). An aunt in Sweden, $100.00 (S. F. 79). The father of the bankrupt borrowed money as he needed it for his personal use and to pay his private debts.

The bankrupts did not deny that they had stated they would make the matter as expensive as possible for their creditors (S. F. 67).

III.

Counsel for the bankrupts admitted that no goods were wrongfully taken or misappropriated from the store of said bankrupts during the administration of the sheriff, receiver in bankruptcy, or trustee in bankruptcy between June 5th and August 16th.

IV.

That on the 22d day of January, 1916, the Honorable J. F. Moore, referee aforesaid, erroneously made an order that the allegations of the trustee's petition were sustained by a preponderance of the evidence, and failed to find that the allegations of said petition and the findings made by said referee were sustained by evidence convincing said referee beyond a reasonable doubt.

That said order was entered without notice to the attorneys for the trustee.

V.

That said order is erroneous for its failure to enter the findings of fact as contained in the Findings of Fact and Conclusions of Law No. I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV as proposed by the trustee.

VI.

That said order is erroneous for its failure to enter the conclusions [19] of law contained in conclusions of law proposed by the trustee.

VII.

That said order is erroneous in its direction that "approximately" $3,189 worth of merchandise was concealed, and its provision in the alternative for delivery of merchandise or money.

VIII.

Said order is erroneous in its failure to contain directions found in trustee's proposed order.

IX.

That said order is erroneous in its failure to make such findings of fact, conclusions and order as the law requires in such case and under such circumstances, and is fundamentally a miscarriage of justice and based upon a misconception of the nature and purpose and such proceedings in this: That said procedure partakes of a *quasi* criminal procedure and not of a civil proceeding, as apparently conceived by said referee.

WHEREFORE petitioner prays for a review of the evidence and of the facts establishing the trustee's cause of action; of the findings of fact entered by the referee; of the proposed findings of fact, conclusions of law; of the ruling and order of said referee, praying that said findings of fact be superseded by the findings of fact, conclusions of law and order as proposed by the trustee, and that the referee be directed to enter, sign and make the proposed findings of fact, conclusions of law and order drawn by the trustee herein.

S. T. HILLS,
Trustee.

HUDSON & MADISON,
WETTRICK, ANDERSON & WETTRICK,
Attorneys for Trustee. [20]

State of Washington,
County of King,—ss.

Nelson R. Anderson, being first duly sworn, on oath

deposes and says: That he is one of the attorneys for trustee herein, has read the foregoing petition for review, knows the contents thereof and believes the same to be true; that said review is sought in good faith, is meritorious and well founded in law.

NELSON R. ANDERSON.

Subscribed and sworn to before me this 27th day of January, 1916.

[Seal] S. J. WETTRICK,

Notary Public in and for the State of Washington, Residing at Seattle.

Received a copy of the within petition this 21st day of February, 1916.

ROMAINE & ABRAMS,
Attys. for Bankrupts.

[Indorsed]: Petition for Review. Filed in the United States District Court, Western District of Washington. Feb. 25, 1916. Frank L. Crosby, Clerk. By ————, Deputy. [21]

United States District Court, Western District of Washington, Northern Division.

No. 56.

In the Matter of DAVID JACOBS and ISAAC JACOBS, Copartners, Doing Business as JACOBS BROTHERS.

Memorandum Decision.

Filed April 19, 1916.

WETTRICK, ANDERSON & WETTRICK, of Seattle.

HUDSON & MADISON, of Bellingham, for Trustee.

ROMAINE & ABRAMS, of Bellingham, for Bankrupts.

NETERER, District Judge:

On March 15, 1915, bankrupts issued a financial statement to R. G. Dun & Co., from inventory of February 3d, as a basis for credit, claiming:

"Cash value of stock on hand"	$17,642.40
Outstanding accounts	1,650.00
Cash on hand	1,098.15
Fixtures	3,500.00
"Prepaid Insurance"	60.00
Total,	$23,950.55

LIABILITIES.

For merchandise not due	812.50
For merchandise closed by note	2,344.00
Loans from bank	1,000.00

"Equity in real estate"..... 9,000.00
"Total worth in and out of business"..... 28,798.05
"Annual business" 39,211.60

After February 3d and before June 2d bankrupts purchased from various sources "about $10,000.00 or $11,000.00 worth of merchandise." On June 2d an inventory was taken at the request of the Seattle Merchants & Credit Men's Association, and $8,679.99 worth of clothing and "hats and furnishings" was found in the store, fixtures $3,000.00, and book accounts $2,096.00. On June 5th an action was begun in the State court, attachment issued and levied upon the merchandise, and by stipulation of parties, the store was not closed, but bankrupts were permitted to carry on the business under the sheriff's supervision until July 14th, when a receiver was appointed in the involuntary bankruptcy proceedings commenced after the action in the State court was begun, [22] and adjudication made on this day. The schedules filed by the bankrupt give a list of seventy-three creditors, and total indebtedness of $22,559.03. On August 2d a trustee was elected, who qualified and took charge of the assets. Appraisers were appointed, and on August 16th an inventory was taken and $4,590.99 worth of merchandise was found. The bankrupts sold while carrying on the business under the stipulation in the State court and turned over to the sheriff, $687.53. The trustee thereafter presented a petition to the referee for delivery of concealed assets, and after a due hearing, the trustee and bankrupts presenting evidence, the referee, on February 10, 1916, rendered his written findings by "a

preponderance of the evidence" that the bankrupts wrongfully and fraudulently retained and had in their possession $3,189.00 worth of merchandise. The trustee and bankrupts have each filed petitions for review, the trustee contending that the findings should have been beyond a reasonable doubt, and the bankrupt contending that the finding was not warranted by the evidence, and also asked permission to present further testimony. On March 16, 1916, a further petition was presented by the trustee praying the delivery of $20,962.41 worth of merchandise, which, it is alleged, is wrongfully retained. A show cause order was issued returnable before the court at Bellingham, April 4th. A petition for discharge was filed by the bankrupt and objections filed by creditors. All of the petitions and objections were by the Court set for hearing before the Court at Bellingham and heard on April 4th and 5th.

The Court heard all of the evidence presented and carefully read all of the testimony taken before the referee. A consideration of this testimony convinces me beyond any question of doubt that the bankrupts did retain and fail to account for a sum not less than that found by the referee, $3,189.00. The referee allowed $400.00 for goods sold after June 2d and before adjudication, and $500.00 as cost of goods sold after adjudication. The bankrupts contend that the finding was an approximation [23] and not based upon evidence, and that much more approximately was sold. However the subject is approached the bankrupts cannot complain, for the reason that if the merchandise was not in their possession, they

must be charged with the money value. *In re Lasky,* 163 Fed. 99. The losses on the sales, if that is the contention, cannot obtain for the few days, as the testimony of the bankrupt shows that the sales were inconsiderable covering a period of time immediately prior. Nor is it likely under the evidence that the merchandise sold after the adjudication was sold at a profit, and if so the allowance made by the referee would more than offset the difference. The testimony conclusively establishes the fact that the bankrupts received the merchandise contended for, and this being traced to the bankrupts, they must be held accountable for the goods, and the burden of proof is upon the bankrupts to satisfactorily explain the absence of the goods and to show where the money was expended. *Boyd* v. *Gluckich,* 116 Fed. 142; *In re Alphin & Lake Cotton Co.,* 134 Fed. 477, 480; *In re Royce Dry Goods Co.,* 133 Fed. 100; *Seigel* v. *Cortel,* 164 Fed. 691. The bankrupts fail to account for the moneys received for the sale of the goods or for the goods, and endeavor to satisfy the law by surmise and guess and estimate of expenditures, when the proof of expenditures made could be readily obtained. There are no vouchers presented which would justify the conclusion that the amount of money to be accounted for could have been expended, and if expended, vouchers could have been presented. Nor were any books kept in which these alleged items of expenditures were noted, and the Court is asked to conclude with relation to the expenditures of these enormous sums upon surmise and conjecture. There perhaps is no good reason why

the order of the referee may not have been made in the alternative where there is testimony which may tend to establish such conclusion. *Samel* v. *Dodd,* 142 Fed. 68. In the instant case the bankrupts were conducting special sales for a period of time and [24] had employed a number of clerks. From the testimony presented it would be a reasonable conclusion to find that the merchandise had been sold and this having been traced into the possession of the bankrupts and failing to account therefore, they should be charged with the value.

Five objections or specifications to discharge have been filed. Without discussing these *seriatim,* I think it is reasonable to conclude that no books were kept by the bankrupt as contemplated by the Bankruptcy Act. There is no record presented which chronicles the receipts and disbursements. It is also established, I think, beyond any question that the statement issued on the 15th of March, 1915, was issued as a basis of credit and was materially false, and that the bankrupts knew it to be false, and this statement, I likewise think, negatives the sworn testimony of the bankrupts that no books were kept, for the reason that the amount of the annual business is given as $39,211.60, which could not be given unless books of account had been kept and which have not been produced. I think the testimony clearly establishes that at least one of the objecting creditors extended credit upon the basis of this statement. The equity in the real estate was also placed at $9,000.00, which a short time afterward was found to be worth only $200.00, and the bankrupts knew at the time the

statement was made that it was based upon a fictitious valuation. While there is testimony which leads to the conclusion that the bankrupts have in their possession sums in excess of the amount found by the referee, the testimony is not clear and convincing, and I think the petition for return of $20,962.41 should therefore be denied.

An order may be entered denying discharge of the bankrupts and directing bankrupts to pay to the trustee the sum of $3,189.00 within twenty days from the date of the order, or in the event an appeal is taken, within such time as may be directed after the appeal is determined.

JEREMIAH NETERER,
Judge. [25]

[Endorsed]: Memorandum Decision. Filed in the United States District Court, Western District of Washington. Apr. 19, 1916. Frank L. Crosby, Clerk. By Anna C. Smith, Deputy. [26]

In the United States District Court for the Western District of Washington, Northern Division.

NO. 56.

In the Matter of DAVID JACOBS and ISAAC JACOBS, Copartners, Doing Business as JACOBS BROS., Bankrupts.

Findings of Fact and Conclusions of Law.

The petition of S. T. Hills, trustee, alleging concealment of assets by the bankrupts of the value of $3,189.08 having been heard by the Honorable J. F.

Moore, one of the Referees in Bankruptcy, sitting at Bellingham, Washington, and an order having been entered by said referee directing the bankrupts, and each of them, to surrender and deliver to said trustee chattels of the value of $3,189.00; and a review having been sought from said order by the Trustee on the grounds that the Referee made findings sustained by a preponderance of the evidence, whereas said findings were sustained beyond all reasonable doubt and was in the alternative; and the bankrupts having also sought a review on the ground that the evidence did not sustain said findings; the Court having considered the testimony introduced before the Referee, having heard the argument of counsel, having considered the briefs submitted, and being fully advised in the premises, makes the following:

FINDINGS OF FACT.

I.

That on the 13th day of July, 1915, petitions therefor having been filed in the above-entitled court on the 13th day of June, 1915, David Jacobs and Isaac Jacobs, copartners, doing business under the name and style of Jacobs Bros., and each of them, were duly adjudged bankrupts, and an order of reference referring all matters arising in said bankruptcy proceedings to the Honorable J. [27] F. Moore, one of the Referees in Bankruptcy of said court, sitting at Bellingham, before whom all proceedings hereinafter set forth were heard and determined was made and entered by the above-entitled court and the Hon. Jeremiah Neterer, one of the Judges thereof.

II.

That said bankrupts on the 5th day of June, 1915, and for many years prior thereto were engaged in the retail mercantile business, at 115 Holly Street, Bellingham, Washington, conducting a clothing, men's furnishings and haberdashery store containing men's and boys' suits, shirts, underwear, suspenders, hose, handkerchiefs, gloves, bathing suits, overalls, umbrellas, suit cases, suits, aprons, coats, quilts, hats, collars, leggins, overcoats, and the usual accessories and merchandise of stores so engaged in said general business.

III.

That on the 5th day of June, 1915, the sheriff of Whatcom County seized and took possession of the merchandise, fixtures and chattels of the bankrupts contained and being in that certain store of said bankrupts located at 115 Holly Street, Bellingham, Washington, and placed in charge thereof deputy sheriff, William Gibson; that said sheriff by his said deputy, William Gibson, by consent of plaintiff in said attachment proceedings in the Superior Court of the State of Washington for Whatcom County and of the said bankrupts acted to all intents and purposes as a receiver, conducted the business as a going concern and employed the said bankrupts as clerks; that said sheriff and said deputy continued to hold and possess said assets until the 14th day of July, 1915; that between June 5th and July 14th, 1915, the sales from said store of said bankrupts amounted to $687.53; that the cost value thereof did not exceed the sum of $500.00.

IV.

That on the 13th day of July, 1915, Joseph A. Hansen was appointed receiver by the above-entitled court; that he duly qualified [28] in the manner provided by law and acted as receiver of said bankrupts from July 13th, 1915, until August 2, 1915; that on August 2, 1915, S. T. Hills was duly elected trustee of the above-entitled estate, and ever since has been, and now is, the duly elected, qualified and acting trustee of said bankrupts and the above-entitled estate.

V.

That on June 2, 1915, exact inventories of the merchandise of said bankrupts then and there contained and being in the said store of said bankrupts located at 115 Holly Street, Bellingham, Washington were made by C. P. Stevens and one, Carrington, in the presence of said bankrupts, by and with the consent of said bankrupts, according to the cost mark placed upon said goods by said bankrupts, and that said merchandise so inventoried was of the value of $8,679.99; that said Carrington was an employee of said bankrupts, who had taken previous inventories of said bankrupts; that bankrupt David Jacobs also assisted in the taking of said inventory.

VI.

That on August 16, 1915, an exact inventory of the merchandise then and there located and being in the store of said bankrupts, 115 Holly Street, Bellingham, Washington, was taken by the said Stevens assisted by appraisers appointed in the above-entitled matter by said referee, according to the cost price

marked on said goods by said bankrupts and in exactly the same manner as the inventory of June 2, 1915; that said merchandise was of the value of $4,590.91.

VII.

That on and between the 2d day of June and the 5th day of June, 1915, both inclusive, the sales of the said bankrupts did not exceed the sum of $400.00; that all of the merchandise and assets of said bankrupts contained in said store of said bankrupts, 115 Holly Street Bellingham, Washington, were faithfully and strictly preserved, maintained [29] intact and accounted for by said sheriff, said deputy sheriff, said receiver in bankruptcy, and by said trustee in bankruptcy, and each of them; that no merchandise or other chattels were wrongfully taken, misappropriated, stolen or removed from said store or said stock or at all from and between the said 5th day of June and the said 16th day of August, 1915, by said officers of said courts or by any other person.

VIII.

That making due allowance for the values of said merchandise sold by said bankrupts on and between the 2d day of June, 1915, and 5th day of June, 1915, both inclusive, and the sale of said sheriff and said deputy sheriff on and between the 5th day of June, 1915, and the 14th day of July, 1915, there is a shortage of merchandise of the value of $3,189.00.

IX.

That on February 3, 1915, said bankrupts make a statement that they owned and possessed merchandise of the value of $17,642.40, cash on hand $1,098.15.

The evidence shows that after February 3, down to the 5th day of June, 1915, they received more than $10,000.00 worth of merchandise from divers and sundry persons and creditors herein; that between February 3, 1915, and June 5, 1915, the moneys deposited in bank by said bankrupts amounted to $6,480.59; that the schedules of said bankrupts show merchandise $8,000.00; that February 3, 1915, said bankrupts had a net worth of $19,784.15; that at the time of adjudication schedules show an actual deficit of $9,476.77. The testimony is unsatisfactory as to what disposition was made of said merchandise. [30]

X.

That the bankrupts, and each of them, have failed, neglected and refused to deliver and furnish the trustee herein any records showing receipts and disbursements and have not kept the books of account contemplated by the bankruptcy act.

XI.

That the foregoing facts and findings are based upon clear and convincing evidence, and the Court is satisfied beyond all reasonable doubt that at the time of the filing of said petitions in bankruptcy and ever since and at the present time that said David Jacobs and said Isaac Jacobs, and each of them, had and now have in their possession and under their control merchandise and chattels of the value of $3,189.00 belonging to the above-entitled estate in bankruptcy, which assets the said David Jacobs and the said Isaac Jacobs, and each of them, have concealed and withheld and now conceal and

withhold from the trustee herein, and is further satisfied beyond all reasonable doubt of the present ability of said David Jacobs and said Isaac Jacobs, and each of them, to deliver said assets to the trustee herein.

Done in open court this 15th day of May, 1916.

JEREMIAH NETERER,

Judge. **[31]**

The Court having made the foregoing Findings of Fact, makes the following:

CONCLUSIONS OF LAW.

(1.) That said bankrupts, and each of them, have concealed and withheld, and now conceal and withhold, from the above-entitled estate in bankruptcy and the trustee thereof, merchandise and chattels of the value of $3,189.00 and that said bankrupts, and each of them, have the present ability to deliver and surrender said merchandise and said chattels to the trustee herein.

(2.) That the trustee herein is entitled to the relief prayed for in his petition and to an order of the Court directing said bankrupts, and each of them, to deliver and surrender said merchandise and chattels of the value of $3,189.00.

Done in open court this 15th day of May, 1916.

JEREMIAH NETERER,

Judge.

Copy of within findings and conclusions recd. and notice of presentation to Judge Neterer, May 15, 1916, 2 P. M., acknowledged this 11th day of May, 1916.

WALTER SCHAFFNER,

Atty. for Bankrupts.

[Indorsed]: Findings of Fact and Conclusions of Law. Filed in the United States District Court, Western District of Washington. May 15, 1916. Frank L. Crosby, Clerk. By Edith A. Handley, Deputy. **[32]**

In the United States District Court, for the Western District of Washington, Northern Division.

No. 56.

In the Matter of DAVID JACOBS and ISAAC JACOBS, Copartners, Doing Business as JACOBS BROS.,

Bankrupts.

Order Directing the Bankrupts to Surrender and Deliver Concealed Merchandise.

This matter coming on regularly for hearing before the above-entitled court upon petition of the trustee and the bankrupts for a review of the findings and order of the Honorable J. F. Moore, one of the referees in bankruptcy, sitting at Bellingham, Washington, made and entered by said referee on the 22d day of January, 1916; the trustee appearing by his attorneys, Wettrick, Anderson & Wettrick and Hudson & Madison, and the bankrupts appearing by their attorneys, Romaine & Abrams and at the time of the entry of this order by an additional counsel in the person of Walter Schaffner; the Court having considered the evidence introduced by the parties before the referee, the argument of counsel, having considered the briefs submitted, having made findings of fact and conclusions of law, and

being fully advised in the premises,

IT IS HEREBY ORDERED that the said David Jacobs and the said Isaac Jacobs, and each of them, within 20 days after the date of the entry of this order, deliver and surrender to S. T. Hills, the trustee in bankruptcy herein, men's and boys' suits, shirts, underwear, suspenders, hose, handkerchiefs, gloves, bathing suits, overalls, umbrellas, suit cases, suits, aprons, coats, quilts, hats, collars, leggins, overcoats, of the kind formerly owned and possessed by said bankrupts in conducting that certain store of said bankrupts, at 115 Holly Street, Bellingham, Washington, of the value **[33]** of $3,189.08, belonging to the said estate in bankruptcy herein, now in the possession and under the control of the said David Jacobs and the said Isaac Jacobs, and each of them; provided that if said bankrupts appeal from this order within 20 days of its entry that said bankrupts shall have 20 days after the disposition of said appeal to comply with said order.

Done in open court this 17th day of May, 1916.

JEREMIAH NETERER,

Judge.

Received copy of within order and service thereof acknowledged this 15th day of May, 1916.

WALTER SCHAFFNER.

[Indorsed]: Order Directing the Bankrupts to Surrender and Deliver Concealed Merchandise. Filed in the United States District Court, Western District of Washington. May 17, 1916. Frank L. Crosby, Clerk. By Edith A. Handley, Deputy. **[34]**

Return on Service of Writ.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed court order on the therein named David Jacobs and Isaac Jacobs, copartners doing business as Jacobs Bros., by handing to and leaving a true and correct copy thereof with them, personally, at Bellingham, Wash., in said District on the 18th day of May, A. D. 1916.

JOHN M. BOYLE,
U. S. Marshal.
By Edward Williams,
Deputy.

Marshal's fees: $12.45.

[Indorsed]: Filed in the U. S. District Court, Western Dist. of Washington. May 18, 1916. Frank L. Crosby, Clerk. Edith A. Handley, Deputy. **[35]**

United States District Court for the Western District of Washington.

No. 56.

In the Matter of DAVID JACOBS & ISAAC JACOBS, as JACOBS BROS.,
Bankrupts.

Praecipe for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare transcript containing petition of trustee to recover $3,189, filed Oct. 5,

1915; order of referee thereon, entered Jan. 22, 1916; petitions of bankrupt and trustee for review thereof, filed ab't Jan. 27, 1916; opinion of Court filed April, 1916; findings and conclusions in re return of $3,189, filed May 15, '16; order entered May 17, 1916.

WALTER SCHAFFNER,
ROMAINE & ABRAMS,
Attys. for Bkpt.

NOTICE.—Attorneys will please endorse their own Filings. Rule 11. **[36]**

[Indorsed]: Praecipe for Process, etc. Filed in the United States District Court, Western District of Washington. May 25, 1916. Frank L. Crosby, Clerk. By Edith A. Handley, Deputy. **[37]**

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 56.

In the Matter of DAVID JACOBS and ISAAC JACOBS, Copartners, Doing Business as JACOBS BROS., Bankrupts.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return, that the foregoing pages numbered from 1 to 37, inclusive, contain a full, true and correct transcript of proceedings and

record in the case of David Jacobs and Isaac Jacobs, copartners, doing business as Jacobs Brothers, Bankrupts, No. 56, pending in this court, as required by the praecipe of counsel filed in said cause, as the originals thereof appear on file in this office at Bellingham, Washington, in the district aforesaid.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred and paid into my office, by and on behalf of the petitioner herein, for making the record, certificate and return to the United States Circuit Court of Appeals, for the Ninth Circuit, in the above-entitled cause, to wit: **[38]**

Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate and return, 77 folios @ 15c	$11.55
Clerk's certificate to transcript—3 folios @ 15c	.45
Seal to said certificate	.20
	$12.20

Attest my hand and the seal of the United States Disrtict Court for the Western District of Washington, at Bellingham, Washington, this 29th day of May, 1916.

[Seal] FRANK L. CROSBY,
Clerk U. S. District Court. **[39]**

[Endorsed]: No. 2804. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of David Jacobs and Isaac Jacobs, Copartners Doing Business as Jacobs Bros., Bankrupts. David Jacobs and Isaac Jacobs, Petitioners, vs. S. T. Hills, as Trustee of the Estate of David Jacobs and Isaac Jacobs, Doing Business as Jacobs Bros., Bankrupts, Respondent. Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the Western District of Washington, Northern Division.

Filed June 3, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

No. 2804

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

In the Matter of DAVID JACOBS and ISAAC JACOBS, Copartners doing business as JACOBS BROS.,

Bankrupts,

DAVID JACOBS and ISAAC JACOBS,

Petitioners,

vs.

S. T. HILLS, as Trustee of the Estate of DAVID JACOBS and ISAAC JACOBS, doing business as JACOBS BROS., Bankrupts,

Respondent.

Petition under Section 24b of the Bankruptcy Act to review and revise an order of the United States District Court for the Western District of Washington, Northern Division.

Filed
AUG 28 1916
F. D. Monckto
Cle

BRIEF OF PETITIONERS.

WALTER SCHAFFNER,
ROMAINE & ABRAMS,
Attorneys for Petitioners.

SHERMAN PRINTING & BINDING CO., SEATTLE, WASH.

No. 2804

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

In the Matter of DAVID JACOBS and ISAAC JACOBS, Copartners doing business as JACOBS BROS.,

Bankrupts,

DAVID JACOBS and ISAAC JACOBS,

Petitioners,

vs.

S. T. HILLS, as Trustee of the Estate of DAVID JACOBS and ISAAC JACOBS, doing business as JACOBS BROS., Bankrupts,

Respondent.

BRIEF OF PETITIONERS

STATEMENT OF THE CASE

The petition to review and revise in this case brings up the Findings and Conclusions of the District Judge and the order based thereon entered May 17, 1916, requiring the petitioners to surrender to the

trustee goods, wares and merchandise of the value of $3,199 (R. 44).

The petition of the trustee (R. 11) filed before the Referee and upon which the subsequent proceedings were based, sets forth in substance that on June 2, 1915, an inventory of the stock of the bankrupts was taken by a representative of creditors of the said bankrupts, and at that time the inventory showed merchandise on hand which cost $8,679.99. That for the next two days the bankrupts had possession of the stock and continued their business; that on the 5th day of June, 1915, an attachment was levied by some of the creditors of the bankrupts. The sheriff took possession of the stock and held the same as a species of receiver, selling goods at retail until July 13, 1915, when an adjudication of bankruptcy was made and a receiver was appointed who held possession of the property until August 16th, 1915, on which day the respondent was elected trustee and took possession. He then made an inventory of the property which came into his possession, which inventory showed merchandise which cost $4,590.91. The petition charges that the bankrupts concealed and had in their possession property representing the difference in value between these inventories after making some allowance for goods admitted to have been sold by the bankrupts and the sheriff.

The petition in paragraph No. III (R. 13) also

charges that the concealment of said merchandise by the said bankrupts was part and parcel of an unlawful and fraudulent conspiracy upon the part of the said bankrupts to cheat and defraud their creditors extending over a period of at least one year and that pursuant to said fraudulent conspiracy said bankrupts had operated said store in an extravagant manner calculated to dissipate the assets and had sold considerable merchandise for less than its cost value, and had made false financial statements in writing to sundry creditors and to R. G. Dun & Co. This paragraph, upon motion of the bankrupts, was stricken out by the referee (R. 16) so that there was no issue made thereon which could properly be heard or determined.

The Referee after hearing evidence filed his order (R. 15) finding, from a preponderance of the evidence, that the bankrupts had concealed merchandise of the value of $3,189.00 and that they had failed to render any satisfactory, or any, account thereof and ordered the bankrupts to either turn over and deliver to the trustee merchandise amounting to said sum or to account to the trustee therefor on or before a fixed date.

Both parties filed petitions for review by the District Judge, which were heard at the same time as the hearing on the discharge of the bankrupts and the hearing on another petition of the trustee requir-

ing the bankrupts to turn over to the trustee merchandise of the value of $20,962.41. From the opinion of the District Judge (R. 32), it appears that on the hearing for review the Court not only considered the evidence taken before the referee, but also took into consideration the evidence heard on the other two matters then pending before him.

The Court also entered Findings of Fact and Conclusions of Law (R. 37), in which the Court found substantially the facts as found by the referee in his order, and in addition found in finding No. 10, that the bankrupts had failed and refused to deliver and furnish the trustee any records showing receipts and disbursements and had not kept the books of account contemplated by the bankruptcy act, and also in finding No. 11 that the findings were based on clear and convincing evidence, and the Court was satisfied beyond all reasonable doubt and also that at the present time bankrupts had in their possession the property mentioned and that they were then concealing the same and that he was satisfied beyond all reasonable doubt of the present ability of the said bankrupts to turn over the said assets to the said trustee.

Finding No. nine is as follows:

"That on February 3, 1915, said bankrupts make a statement that they owned and possessed merchandise of the value of $17,642.40, cash on hand $1,098.15. The evidence shows that after February 3, down to the 5th day of June, 1915, they received more than

$10,000.00 worth of merchandise from divers and sundry persons and creditors herein; that between February 3, 1915, and June 5, 1915, the moneys deposited in bank by said bankrupts amounted to $6,-480.59; that the schedules of said bankrupts show merchandise $8,000.00; that February 3, 1915, said bankrupts had a net worth of $19,784.15; that at the time of adjudication schedules show an actual deficit of $9,476.77. The testimony is unsatisfactory as to what disposition was made of said merchandise."

SPECIFICATION OF ERRORS RELIED UPON

I.

That that part of finding No. 11 which finds that your petitioners now have property of the value of Thirty-one hundred eighty-nine ($3,189.00) Dollars belonging to their estate in bankruptcy, is wholly immaterial to, and not involved in, any of the issues raised by the petition.

II.

That that portion of said finding No. 11 which finds that your petitioners now conceal and withhold from the trustee the said property is wholly immaterial and not involved in any of the issues raised by the petition.

III.

That that part of finding No. 11 which finds that the Court is satisfied beyond all reasonable doubt of the present ability of your petitioners, and each of them, to deliver said assets to the trustee, is immaterial and not involved in any of the issues raised by the said petition, and is without warrant of law.

IV.

That findings No. 9 and 10 were wholly immaterial and the facts therein stated were not involved in any of the issues raised by the said petition.

V.

That neither of the conclusions of law nor the order under review made by the said District Judge are justified by the findings of fact herein.

BRIEF OF ARGUMENT

I.

There should have been no finding as to the present ability to perform nor the present possession of property by the bankrupts.

Morehouse vs. Pacific Hardware & Steel Co., 177 Fed. 327.
Power vs. Fuhrman, 220 Fed. 787.
Schmid vs. Rosenthal, 230 Fed. 818.
Epstein vs. Steinfeld, 210 Fed. 236.
In re Ricardilli, 221 Fed. 630.

II.

The findings as to the failure to keep books and the alleged false statements were not properly involved and should not have been made.

III.

The findings do not support the conclusions and order of the Judge.

Black on Bankruptcy, Sec. 229.
Kirsner vs. Tallaferro, 202 Fed. 51.
In re Switzer, 104 Fed. 976.
In re Goldfarb Bros., 131 Fed. 643.

ARGUMENT

I.

The first error relied on is that the Court below found that the bankrupts had the property mentioned in the petition in their possession, not only at the time of the filing of the petition in bankruptcy, but also that this property was in the possession of the bankrupts on the date of the entry of the order and that on that date they unlawfully withheld the same from the trustee in bankruptcy. The contention of the petitioners is, that such a finding is not properly made at this stage of the proceedings, but that the question of fact considered thereby becomes material only on the hearing of a proceeding for contempt for failure to obey the order now under review.

At first glance, it may seem to be of slight importance whether the question of the present ability of the bankrupts to satisfy the order is determined at the hearing on the petition of the trustee to turn over property, or in a contempt proceeding for failure to obey an order entered on such petition. In view of the holdings of this Court, the distinction, however, becomes of extreme importance. Upon the decision of this Court upon this question depends the right of the bankrupts to have this Court review a finding of fact in such a proceeding before, perhaps, they may be committed to jail.

In *Morehouse vs. Pacific Hardware & Steel Co.*,

177 Fed. 327, this Court held that the only method of reviewing an order of the District Court requiring a bankrupt to turn over property to its trustee, was by petition to review and revise under Sec. 24b of the Bankruptcy Act, and that no appeal lay from such an order. Since said decision, this has been the settled rule in this district. A petition to review carries with it no right to have the facts examined. Accordingly, when the District Court enters an order requiring a bankrupt to turn over money or property to his trustee with Findings of Fact, those findings are binding upon this Court in its review of such order.

Until the decision of *Power vs. Fuhrman*, 220 Fed. 787, it was believed that on a contempt proceeding, the question of the fact as to the present ability of the bankrupt to comply with an order to turn over might be raised again and heard in the court below. In that case, the District Court at the time of ordering the bankrupt to turn over, found, as it did in the case at bar, that the bankrupt had the present ability to perform. The order was never carried to this Court for review. When the contempt proceeding came before this Court, the Court said: "The judgment of the Court below, not having been appealed from or otherwise questioned by either of the respondents, established that at the date of its entry, July 23, 1913, the money in question was in the actual possession and under the control of the said bankrupt and his said

wife, and was then being by them fraudulently concealed and withheld from the creditors of the bankrupt."

So if in this case the bankrupts should fail to comply with the terms of the order under review and it was sought to enforce obedience to that order by contempt proceedings, the present order and its findings would be conclusive against these petitioners and they would be barred from having the judgment of this Court upon the question of their guilt.

This specification of error is not without authority. The only Circuit Court of Appeals which has passed on the question specifically is the Third Circuit. In that Circuit there is now a settled line of authority that on the hearing of a petition to turn over, the only question to be determined is whether the property was in the possession of the bankrupt at the date of the filing of the petition in bankruptcy. The last expression of that Court is *Schmid vs. Rosenthal,* 230 Fed. 818, in which the Court says: "Some confusion seems to exist in the minds of counsel concerning the effect of the order below, and we may say a few further words to make the situation clear. This is not a proceeding to punish for contempt. The controversy has not yet reached that stage. Nothing has been done thus far except to ascertain what sum of money the bankrupt should have accounted for at the time of the adjudication, and should have turned over

to his trustee afterwards. The practice was definitely settled by the decision in *Epstein vs. Steinfeld* (followed in *Re Pennell,* 214 Fed. 341), and with a slight modification the referee's finding will conform to that decision. The finding should have been restricted to the date of bankruptcy, and should therefore be modified by striking out the words 'And now has in his possession' and by substituting therefor the words 'At the time the petition in bankruptcy was filed.'"

See also:

Epstein vs. Steinfeld, 210 Fed. 236.
In re Ricaradelli, 221 Fed. 638.

An examination of the record and particularly the opinion issued by the District Judge (R. 32) will show clearly that this desire to have these facts reviewed by this Court is not an idle one. The opinion shows and the findings of fact show that the decision in this case was based on not only the evidence offered on the petition of the trustee, but that matters and things not mentioned in that proceeding, but heard on the question of the discharge, were also considered by the Court. These petitioners insist on their undoubted rights, to have this question, one which, if decided against them, may result in their imprisonment for an indefinite period, decided according to the evidence heard upon it, and without reference to what the Court may have heard or gathered from some other pro-

ceeding, and to be in a position to present to this Court on review the facts upon which it is sought to punish them.

II.

The petition upon which this whole proceeding is based, found on page 11 of the record, contained, when filed, paragraph III (R. 13), which contained some very general and loose averments, that the matters complained of were the result of a fraudulent conspiracy; that the bankrupts had made false statement in writing to their creditors and sold valuable property for nothing. This paragraph was stricken by the referee before the hearing (R. 16). Notwithstanding this fact, we find that findings of fact Nos. 9 and 10 (R. 14) are based solely upon this issue, which was stricken from the petition.

It is a remarkable situation when a petition is filed containing charges which are stricken from it before the hearing, that the Court in deciding that petition makes findings on the stricken charges. These findings, as shown in *Power vs. Fuhrman, supra,* are conclusive upon the bankrupt in any hearing, or, at least, in any civil hearing.

Shall they be compelled to submit to findings such as these, made without a charge of that kind against them, when they were not in issue and when no evidence can properly be received upon them? It seems to us that the mere statement of this situation is suffi-

cient without argument to demonstrate that, as to these findings, there should be a reversal of the Court below.

III.

If we omit findings Nos. 9 and 10, we find, from an inspection of the findings, that in reality what the Court did was to find that on June 2nd, according to the inventory taken by Mr. Stevens, there was merchandise on hand in the sum of $8,679.90; that on August 16, at the time of the inventory taken by the appraisers $4,590.91, and that making allowance for all that it is claimed was sold during the time, there is a shortage of $3,189.00. As a matter of fact, taking findings 1 to 8, this is all the Court found. Finding No. 11, viewed properly, is nothing but a conclusion of law. Looking at the findings as a whole, it is manifest that No. 11 is nothing but a general conclusion of the Court from the previous findings.

In considering whether these first eight findings justify the holding that the bankrupts have concealed the property in question, it should be borne in mind that, according to the findings, this property was in their possession for only two days, to-wit, the 3rd and 4th of June, subsequent to the taking of the first inventory. On the 5th of June, 1915 (R. 39), the property was taken possession of by the sheriff and from that time on remained in the custody of the law. In other words, in a total of seventy-five days between the first and second inventory, the bankrupts had pos-

session for two and it is to be presumed that in those two days they took $3,100 worth of merchandise from their store, and the proof thereof is so slight and so slender that the Court when it entered this order under review, finds in finding No. 9 (R. 42) "That the testimony is unsatisfactory as to what disposition was made of this merchandise."

If there is any provision of law definitely established in this class of cases, it is that the withholding of the property must be shown absolutely and clearly before any order will be entered.

Black on Bankruptcy, Sec. 229.
Kirsner vs. Tallaferro, 202 Fed. 51.
In re Switzer, 104 Fed. 976.
In re Goldfarb Bros., 131 Fed. 643.

In this case we have a finding that the testimony is unsatisfactory and immediately following it, a finding (Finding of Fact No. 11) that the Court is satisfied beyond all reasonable doubt as to what disposition was made of the merchandise. This necessarily follows, because the Court finds that it is satisfied beyond all reasonable doubt that the bankrupts have concealed it, and is satisfied beyond all reasonable doubt that they are now concealing it and that they now have it in their possession. If the testimony is unsatisfactory, by what method of reason can we have the Court satisfied beyond all reasonable doubt?

It is respectfully submitted that this record shows that this question, so far as it concerns the bankrupts, has been decided, not on the record made, but on evidence taken in every sort of proceeding in this bankruptcy; that the order should be reversed and an opportunity given to try the case on the issues raised by the petition, or as modified by the referee, unaffected by anything the Court may have heard in any other matter, or in any event that the order should be so modified that these petitions will be able to present the question of their present ability to perform, and have that considered, determined and passed upon, if necessary, by this Court.

WALTER SCHAFFNER,

ROMAINE & ABRAMS,

Attorneys for Petitioners.

No. 2804

United States
Circuit Court of Appeals

FOR THE NINTH CIRCUIT

In the Matter of DAVID JACOBS and ISAAC JACOBS, Copartners Doing Business as JACOBS BROS.,

Bankrupts,

DAVID JACOBS and ISAAC JACOBS,

Petitioners,

vs.

S. T. HILLS, as Trustee of the Estate of DAVID JACOBS and ISAAC JACOBS, Doing Business as JACOBS BROS., Bankrupts,

Respondent.

BRIEF OF RESPONDENT

NELSON R. ANDERSON,
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824 Central Building
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THE HOLLY PRESS, SEATTLE

Filed
SEP 2 - 1916
F. D. Monckton,
Clerk.

No. 2804

United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

In the Matter of DAVID JACOBS and ISAAC JACOBS, Copartners Doing Business as JACOBS BROS.,

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S. T. HILLS, as Trustee of the Estate of DAVID JACOBS and ISAAC JACOBS, Doing Business as JACOBS BROS., Bankrupts,

Respondent.

BRIEF OF RESPONDENT

STATEMENT OF THE CASE.

(Our italics throughout.)

The statement of the case by petitioners is very brief, but the facts are fully set forth in the record, particularly pages 22-28.

We wish also to add, for the purpose of clarifying the opinion of the trial judge, that his opinion covers three separate and distinct matters. First—He reviewed the testimony, findings and order of the referee on the trustee's petition to recover concealed assets amounting to $3,189.00. This is the only matter now on review in this Court. Second—The District Court heard the trustee's second petition alleging concealment by the bankrupts of *other* merchandise between February 3rd and June 2nd of over $20,000. This petition he dismissed because the evidence was not satisfactory beyond a reasonable doubt. Third—The District Court heard the application of the bankrupts for a discharge and the objections of the creditors thereto. The objections were sustained and a discharge refused. No appeal or review has been taken on these last two matters.

The findings of the District Court relating to the concealment of $3,189.00 worth of merchandise were based upon the evidence submitted before the referee. (R. 22-29).

I.

The bankrupts complain of finding of fact No. 9 (R. 41, 42) that the bankrupts had concealed

other merchandise exceeding $14,000.00 between February 3, 1915, and June 2, 1915, as wholly immaterial and that the facts therein stated are not involved in any of the issues raised by said petition.

The issue was presented by paragraph III of the Petition, which alleged a "fraudulent conspiracy on the part of said bankrupts to cheat and defraud their creditors extending over a period of at least one year last past," etc. (R. 13).

The materiality of the allegation and the finding is of some importance in considering motive or intent to defraud, and to that extent proof of other fraudulent acts of a similar character is always admissible.

Kettenbach vs. United States, 202 Fed. 377, (C. C. A. 9th), quotes *Wood vs. United States,* 16 Pet. 342, 10 L. Ed. 987, where Mr. Justice Story said:

> "The question was one of fraudulent intent or not; and upon questions of that sort, where the intent of the party is matter in issue, it has always been deemed allowable, as well in criminal as in civil cases, to introduce evidence of other acts and doings of the party of a kindred character, in order to illustrate or establish his intent or motive in the particular action directly in judgment. Indeed, in no other way would it be practicable in many cases to establish such intent or motive."

State vs. Schuman, 89 Wash. 9, 153 Pac. 1084, holds:

> "It is, of course, a general rule that evidence of the commission of a separate and distinct crime is inadmissible to aid the conviction of a defendant for the crime charged. There are, however, exceptions to this rule as thoroughly established as the rule itself. Where the purpose is to show a system or general design from which a criminal intent or purpose may be inferred in the commission of the particular act charged, collateral offenses of the same character and perpetrated in the same way, though not otherwise connected, can always be put in evidence as tending to establish the system or design. The logical basis of this exception to the general rule of exclusion is thus admirably expressed by Wharton."

12 *Cyc.* 411, states the rule: Often where the crime charged is one of a series of swindles or other crimes involving a fraudulent intent, for the purpose of showing such intent such evidence is admissible.

See findings in *In Re Fuhrman,* 220 Fed. 787, (C. C. A. 9th).

Also see:

12 *Cyc.* 408-410.

29 *Cyc.* 1081.

State vs. Craddick, 61 Wash. 425, 112 Pac. 491.

State vs. Wappenstein, 67 Wash. 502, 121 Pac. 989.

Counsel for bankrupts is correct in stating that the allegations of the trustee's petition relating to concealment of *other* merchandise was stricken by the referee on motion. However, the record shows that the evidence was admitted by the referee (R. 22, 25, 26). The referee found that the bankrupts proceeded with "a well-defined purpose to defraud their creditors." (R. 7). This evidence was submitted to the District Judge upon petitions for review filed by the bankrupts and the trustee, and the District Judge considered said evidence, held it was competent, material and relevant and made a finding accordingly. Since referees sit as special masters, it was within the province of the District Judge's powers to make and enter such a finding.

If the law were otherwise, no error was committed; for the finding was not indispensable to the order. The order would stand unassailable without the finding of other frauds. In other words, this finding might be treated by the court as surplusage. The bankrupts will never suffer any liability on the concealment of *other* merchandise, because the trustee's petition relating thereto was dismissed by the District Judge. Inasmuch as the finding could be dispensed with and the result in nowise be affected,

the bankrupts, *taking their view of the matter,* have nothing to complain of. The matter not being prejudicial, the bankrupts cannot successfully complain.

> *Chicago Ri. Ry. Co. vs. Wright,* 239 U. S. 36, 36 S. C. R. 185.

We think such a finding proper under the law; and, as a matter of common sense, such evidence would add to the moral certainty of the court that fraud was committed between June 2nd and 5th.

II.

The bankrupts next complain of finding of fact No. 10 as immaterial and not involved in any of the issues raised by the petition. In any case, the destruction of the books of account and records is a circumstance indicating an intent to defraud and is a fraud sufficient to bar a discharge under the bankruptcy act. Sec. 14-b-2.

> *Glass vs. United States,* 231 Fed. 65 (C. C. A. 3).

These facts were adduced before the referee. (R. 26-27).

III.

Error is assigned to that part of the finding No. 11 which finds that the bankrupts *now* have

property of the value of $3,189 as being immaterial and not involved in any of the issues raised by the petition.

Paragraph II of the petition alleged that "merchandise of the value of $3,189.08 has been wrongfully and unlawfully and fraudulently taken, removed and concealed from said store by said David Jacobs and Isaac Jacobs, and that the said David Jacobs and Isaac Jacobs *have* in their possession and under their control goods, wares and merchandise of which the trustee herein *is* the owner and entitled to the possession thereof." Thus the issue was expressly raised.

Counsel of the bankrupts contend that the Court should have confined said findings to the date of the filing of the petitions alleging bankruptcy (June 13, 1915); that said finding should not also speak as of the date of the making and entry of the order, which was on May 15, 1916.

This is not a new question before this Court. The lower court is sustained by the rule laid down by Judge Hanford in *Ripon Knitting Works vs. Schreiber,* 101 Fed. 810, from which a review was sought by the bankrupts and dismissed by this Court, 104 Fed. 1006. Judge Hanford said on page 811:

> "* * * The referee made a finding that the bankrupt has in his possession and unlawfully withholds from the trustee of the estate, at least $6,000.00, and thereupon made an order requiring him to pay that amount to the trustee within a period of five days. Exceptions were taken to said findings and order, and the Court, upon a review of the evidence, and further examination of all the books and memoranda relating to the business, reached the conclusion that the referee had not given full credit for all the money paid for merchandise and expenses of the business and thereupon modified the order of the referee by fixing the amount of money adjudged to be in the possession of the bankrupt and wrongfully withheld by him as $3,000, which amount the bankrupts were required to pay to the trustee forthwith."

After reciting these facts and others the Court took up the matter of the bankrupt's contempt and found him guilty.

In the *Fuhrman case,* 220 Fed. 787, which came to this Court upon review of the contempt proceedings, the referee and the Court, upon the petition of the trustee to deliver concealed assets, entered findings identical with those made in the case at bar. Judge Ross said:

> "The judgment of the Court below affirming the findings and order of the referee, not having been appealed from or otherwise questioned by either the respondents, established that at the date of its entry—July 23, 1913—the money in question was in the actual possession and under the control of said bankrupt and his said wife, and was then being by them

fraudulently concealed and withheld from the creditors of the bankrupt."

Moorehouse vs. Pacific Hardware & Steel Co., 177 Fed. 337, cited by bankrupts, was a contempt case and throws no light on the subject.

That the findings should speak as of the date of the order is the rule generally prevailing.

First Circuit. *In re Krall,* 182 Fed. 191, (D. C. Conn.).

In re Walder, 16 A. B. R. 41 (D. C. Conn.).

Second Circuit. In this Circuit the orders made and entered all speak of the concealment as of the date of the entry of the order, and in no case relate to concealment existing on the date of the filing of the petition.

In re D. Levy & Co., 142 Fed. 442.

In re Stavrahn, 173 Fed. 330, (Contempt case).

In re Weber, 200 Fed. 404. (Contempt case).

In re Graning, 229 Fed. 370. (Contempt case).

Fourth Circuit. In *Kirsner vs. Taliaferro,* 202 Fed. 51, the Court said on page 58:

"The bankrupt further says that there was absolutely no evidence before the referee or

> before the Court below to show that he was able to comply with the decree or that he then had said goods in his possession or proceeds derived from the sale or disposal thereof,"

but the Court cited the general rule laid down in *In Re Meier,* 182 Fed. 799, to the effect that possession at the time of the entry of the order was presumed from the fact that the goods were in the bankrupt's possession shortly before adjudication. On page 60 the Court said:

> "It must be borne in mind that the form of the order in the case at bar was that the bankrupt should be imprisoned not for a definite term as a punishment, but until he complied with the order by turning over the property in question to his trustees. It is because the order is so worded that the *court must be satisfied of the present ability of the bankrupt to comply with it.*"

FIFTH CIRCUIT. In *Stuart vs. Reyolds,* 204 Fed. 709, the Court said:

> "From the evidence before him, which was of a conflicting nature, the judge was unable affirmatively to find as a fact that the bankrupt, *at the time of the making of the order* against him by the referee, then had in his possession or under his control either the goods or the money he was directed to turn over to the trustee of his estate. Failing to find this, it was incumbent on the judge to reverse the action of the referee and discharge the rule against the bankrupt."

See

Samel vs. Dodd, 142 Fed. 68.

In re Reynolds, 190 Fed. 967 (D. C. Ala.).

In re Dickens, 175 Fed. 808 (D. C. Ala.).

Sixth Circuit. This Circuit Court of Appeals does not appear to have passed on the question, but the rule as laid down in district courts is the same as in the case at bar.

In re Kreuger, 197 Fed. 124, (D. C. Ky.).

Seventh Circuit. *In re Rosser,* 101 Fed. 562, the Court said of the power to require bankrupts to surrender and deliver property to the trustee that it should be exercised with great caution and that

> "two essential facts limit this power and condition its lawful exercise. They are that the money or property directed to be delivered to the trustee or other officer of the court is a part of the bankrupt estate, and that the bankrupt or person ordered to deliver it has it in his possession or under his control at the time that the order of delivery is made. If the property is not a part of the estate, obviously no lawful order for its delivery to the trustee can be made. If the money or property in controversy was a part of the estate of the bankrupt, but before the order for its delivery is made he has squandered, disposed, or lost it, so that it is not in his control or possession, and he cannot obtain and deliver it at the time the order of delivery is made, or within a reasonable time thereafter, it cannot be a lawful order, because the court may not order one to do an impossibility, and then punish him for refusal to perform it."

This rule was followed in

Schweer vs. Brown, 130 Fed. 328,

In re Meier, 182 Fed. 799,

Shea et al vs. Lewis et al, 206 Fed. 877.

In re Alphin & Lake Cotton Co., 134 Fed. 477, (D. C. Ark.).

Eighth Circuit. *In re Baum,* 169 Fed. 410:

"The Court found in its order that he concealed assets, and from the fact that it ordered the bankrupt to pay over money it must be presumed, we think, that it found that the assets consisted of money, and that the same was in his possession and under his control, at the time the order was made, and that he was able to comply with the order."

Boyd vs. Glucklich, 116 Fed. 131.

In re Mayer, 98 Fed. 839 (D. C. Wis.).

"Present possession or control must be proved. It will not do simply to prove the bankrupt ought still to have the possession or control; it must be proved that he actually still has possession or control."

Rem. on Bankruptcy, Sec. 1845, page 1142, and Supp.

In one Circuit only does the rule obtain as contended for by the bankrupts. In the Third Circuit the rule now is that the order to deliver concealed merchandise should be based upon a finding that

the assets were concealed at the time of the filing of the petition, and the court should not inquire of what took place subsequent thereto; such matters shall properly be inquired into upon contempt proceedings only.

Epstein vs. Steinfeld, 210 Fed. 236, affirming 206 Fed. 568.

In re Pennell, 214 Fed. 337.

Schmidt vs. Rosenthal, 230 Fed. 818.

In the *Pennell* case and in the *Schmidt* case the order was not reversed, but was simply modified by striking out the "now conceals." This rule, we believe, is unsound:

1. The rule first laid down in *Epstein vs. Steinfeld, supra,* in 1914, is not supported by authority. The opinion states the rule of practice was first laid down in an earlier decision of that court, *American Trust Co. vs. Wallis,* 126 Fed. 464. As we read the *Wallis* case, it holds the very contrary. In our opinion, that case holds that it would be absurd to enter an order to deliver assets in the absence of proof of the physical ability of the bankrupt to comply; for (1), enforcement by contempt proceedings would result in nothing, and, (2), "the contempt could be purged only by a reiteration of the physical impossibility to comply with the order

(to return assets) whose disobedience is being thus punished."

II. As a protection of its own dignity, a Court should not make an order in *personam* unless it can be performed. It ought not direct a thing to be done unless it can be done. A court ought not to order a man to turn over assets if he hasn't got them; or make the order whether or not the bankrupt has any to deliver. Making orders impossible of performance is not only arbitrary but also as futile as the commands of King Canute to the rising tide. Respect for the courts can best be maintained by making orders that can be obeyed and by a constant and faithful enforcement of those orders once made.

III. As a protection to the bankrupt, the order to deliver should not be made unless he can make the delivery ordered. No man should suffer the loss of reputation incident to an adjudication of contempt of Court, even though he be allowed to purge the contempt by showing the impossibility. In fine, there could be no contempt—not having the assets, he never had the *opportunity* to either obey or disobey, comply or refuse.

IV. *Re-delivery* is the relief sought and the issues are thereby determined. If the person pro-

ceeded against hasn't got the goods, that should end the case. If he has them, enforcement by contempt should follow refusal to obey.

The issue on contempt proceedure is: Is the defendant guilty or not guilty of disobedience? Did he obey or disobey the order of the Court? Then, the question of the correctness of the order to deliver is not under review. The case is not to be retried. Matters covered by it are *res adjudicata.* The bankrupts' only defense is to show what disposition he made of the goods subsequent to the order. Otherwise, the same facts are again tried on the contempt proceedings and the same questions are twice adjudicated and justice delayed.

In re Laus, 158 Fed. 610, (C. C. A. 2).

V. The utter ridiculousness of this rule of procedure is better seen by illustration.

Suppose, following the practice of the Third Circuit, the proof is limited to the date of the filing of the petitions (June 13th) and that the proof was abundant, as it was, that Jacobs Bros. had the merchandise in question on that day, and then suppose that Jacobs Bros. come forward and tender as a defense that they had stored the goods in a certain building and that a fire destroyed same and its contents on September 1st. Is the court going to refuse

to hear this evidence and find the bankrupts had the merchandise on June 13, 1915, and order on May 15, 1916, the bankrupts to deliver said merchandise, and then purge them of contempt because of the fire on September 1st, in the so-called second stage of the proceeding?

Again, suppose Jacobs Bros. tender a different defense by offering to show that on September 1st they turned this merchandise over to their father and that he has it. Is the order to be directed against Jacobs Bros.? If against the father, is the inquiry to relate to June 13th, the date of the filing of the petitions alleging bankruptcy? or to September 1st, the date of the transfer, and that date only? If June 13th, the trustee, of course, can make no case. Nor is the law so foolish.

> *Bryan vs. Bernheimer,* 181 U. S. 188; 44 L. Ed. 814; 21 Sup. Ct. Rep. 557.

VI. What good purpose is subserved by this course pursued in the Third Circuit? The very purpose and object of the action is to secure possession of the merchandise. If non-existent, why the idle inquiry of what was and is not? Why should we later, say in January, 1917, introduce evidence in contempt proceedings to show that the bankrupts possessed and had the ability to deliver

said assets on May 15, 1916, when on May 15, 1916, we were in court to determine that very question?

On the contrary the burden is on the bankrupt to purge the aforesaid contempt by proving, if possible, his inability to comply with order to surrender assets. In the *Fuhrman* case this Court said:

> "That judgment placed the legal duty upon both husband and wife of complying with its requirements. That such compliance is enforceable by proceedings in contempt is beyond question. Equally plain is it that the burden is upon the delinquent who claims to be incapable of making the delivery decreed, to prove the fact of such inability."

Counsel for bankrupts states that the findings of the District judge are not based upon evidence taken before the referee. This is not a correct statement. The recitals preceding the findings refer only to the evidence taken before the referee. The District judge made separate findings as to the concealment alleged between February 3, 1915, and June 2, 1915. He also made separate findings concerning the objections to the bankrupts' application for a discharge. These matters were all separately considered by the District Court.

It is a forced argument that a finding of present ability should not be made because evidence thereof cannot be considered on review. The remedy for

such a state of affairs is to apply to Congress. But the point is absolutely without merit, because on contempt proceedings the appellant court will not review the evidence relating to present ability or to any other question of fact.

Morehouse vs. Pacific Hardware & Steel Co., 177 Pac. 337 (C. C. A. 9th).

In re Fuhrman, supra, (C. C. A. 9th).

Therefore, whether upon a review from the trustee's petition alleging concealment and findings based thereon or upon a review of contempt proceedings this Court cannot consider the facts.

IV.

What we just said concerning "now possess" answers the objection that the court found that the bankrupts "now conceal" said assets.

V.

The bankrupts contend that the trustee should have alleged in so many words that they had the present ability to make delivery. The bankrupts do not discuss the point in their brief and the point is not well taken. It could not well be contended that the bankrupts were misled. It was alleged that they possessed the merchandise and the prayer was that

they deliver it over to the trustee. The object of the petition, the relief sought, was an order in *personam* to deliver physical possession of the assets presently withheld by the bankrupts, and no one could possibly mistake that. Thus the facts or elements constituting present ability were pleaded without the conclusion being attached. But the more conclusive answer is that this is a matter of defense.

In re Stavrahn, 174 Fed. 330, (C. C. A. 2), Judge Lacombe said:

> "We do not find in the statute, the general orders, or in any decision which has been called to our attention, any authority for the proposition that the petition should contain an affirmative allegation of the bankrupt's present ability to comply with the order requiring him to turn over property. That is more properly a matter of defense. When the moving papers indicate that it has been determined after a full hearing that the bankrupt has concealed some specific piece of property, that he has been ordered to turn it over to the trustee, that he has been duly served with such order, and that he has failed to comply with such order, sufficient is charged to put him upon his defense."

In re Fuhrman, supra.

The petition filed before the referee herein contains all the requisites pointed out in

Kirsner vs. Taliaferro, supra, page 58.

VI.

Error is alleged of the finding of the *present ability* of the bankrupts to deliver said assets to the trustee on the grounds of immateriality, not an issue, and without warrant of law. Abundant authority sustains the lower court.

American Trust Co. vs. Wallis, 126 Fed. 464 (C. C. A. 3):

> "In the absence of fraud or concealment, the bankrupt court can only order the delivery of property to the trustee which the bankrupt is physically able to deliver up, having the same in his possession or control. If it shall appear that he is not physically able to deliver the property required by the order, then, confessedly, proceedings for contempt, by fine and imprisonment, would result in nothing, certainly not in compliance with the order. The contempt in this case could only be purged by a reiteration of the physical impossibility to comply with the order whose disobedience is being thus punished. An order made under such circumstances would be as absurd as it is inconsistent with the principles of individual liberty."

Kirsner vs. Taliaferro, supra (4th).

Samel vs. Dodd, 16 A. B. R. 169, 142 Fed. 68

(C. C. A. 5th, concurring opinion):

> "But, unless the person can perform the act commanded, the court has no authority to punish for a failure to perform it. Any other rule would be unreasonable and unjust. To imprison one for not doing what he cannot do

is inconsistent with the principles of individual liberty. There is no statute of law which confers such authority. Imprisonment under such circumstances for failure to pay money may force the friends of the prisoner to raise and pay the required sum, but such imprisonment is unwarranted by law in a jurisdiction where imprisonment for debt is forbidden. Where the prisoner has the power to comply with the order, having the money or thing in question in his possession, he may, of course, be punished for his failure to surrender it, without conflict with any rule of law against imprisonment for debt."

In re Baum, 169 Fed. 410, (C. C. A. 8th): "The Court, of course, could not require the petitioner doing an impossible thing and then punish him for refusing to perform it. Therefore, from the fact that the court ordered him to pay over the money, it must necessarily have had before it testimony sufficient to satisfy it of his inability to comply."

Schweer vs. Brown, supra.

In re Rosser, 101 Fed. 562, (C. C. A. 8th, contempt case).

Ripon Knitting Works, vs. Schreiber, 101 Fed. 810, affirmed 104 Fed. 106, (C. C. A. 9th).

In re Fuhrman, 220 Fed. 787, (C. C. A. 9th).

In re Sax, 15 A. B. R. 456 (D. C. Pa.):

"If it be clearly shown that a bankrupt has money or goods in his possession that belong to

his trustee, he must take the consequences of a refusal to hand them over, but he should not be summarily directed to pay *unless the court is morally certain that there has been concealment* and *that obedience to the order can be enforced.* If the bankrupt has been guilty of fraudulent concealment, but no longer has the goods or the money, he should be prosecuted. He should not be imprisoned on a summary proceeding for contempt, unless he is disobeying an order with which he is able to comply."

In re Barton Bros., 18 A. B. R. 100, 149 Fed. 620 (D. C. Ark.):

"It is seen, by an examination of the two decisions last quoted, unless they were in possession of the money at the time the order is made to pay over, the court has no power to make the order. If the court were to make the order for them to pay over when they were without the means of paying over, the court would then be requiring them to do an impossible thing, and the effect of such an order would be equivalent to imprisonment for debt."

In re Milk Co., 16 A. B. R. 731 (D. C. Pa.).

In re Dickens, 175 Fed. 808, (D. C. Alas.).

In re Nisenson, 182 Fed. 912, (D. C. N. J.).

In re Ruos, 164 Fed. 749, (D. C. Pa.).

In re Adler, 170 Fed. 634, (D. C. Okla.).

In re Mize, 172 Fed. 945, (D. C. Ala.).

In re Holland, 176 Fed. 624, (D. C. N. Y.), (Contempt).

In re Mayer, 98 Fed. 839, (D. C. Wis.).

Remington on Bankruptcy, Sec. 1842, page 1137:

> "The order operates in *personam,* upon the person of the offender, by requiring him to do the thing commanded upon penalty of punishment for refusal; and such an order is erroneous, as matter of law, unless it plainly and affirmatively appear from the record that he has the power to comply with its requirements. If, having the property, he fail to surrender it in obedience to the order of the court, he vountarily submits himself to the consequences."

9 *Cyc.* 13, 14.

To require such a finding before entering an order to deliver assets is a protection to the bankrupts and distinctly for their benefit.

VII.

The property claimed to be withheld is specified in paragraph II of the findings of fact, (R. 39) and the order directed delivery and surrender of

> "men's and boys' suits, shirts, underwear, suspenders, hose, handkerchiefs, gloves, bathing suits, overalls, umbrellas, suit cases, suits, aprons, coats, quilts, hats, collars, leggins, overcoats, of the kind formerly owned and possessed by said bankrupts in conducting the certain store of said bankrupts, at 115 Holly Street, Bellingham, Washington, of the value of $3,189.08 belonging to the said estate in bankruptcy herein, now in the possession and under

the control of the said David Jacobs and the said Isaac Jacobs, and each of them." (R. 45).

This description was sufficient under all the cases that we have been able to find relating to the subject.

In *Ripon Knitting Works vs. Schreiber, supra,* Judge Hanford said:

> "The principle of law and justice does not exact of those who have incurred loss by extending credit to a dishonest merchant the impossible thing of tracing the proceeds of merchandise which he has delivered before compelling him to surrender money in his possession which rightfully should be applied to the trustee of their accounts. In this case it is impossible for the trustee or the creditors to identify the pieces of money which have come into the bankrupt's hands or to identify or describe the particular pairs of shoes which were sold for money which the bankrupt now conceals; and, being impossible, it is unnecessary." Affirmed 104 Fed. 1006, (C. C. A. 9th).

Kirsner vs. Taliaferro, 202 Fed. 51 (C. C. A. 4th):

> "The bankrupt says that there was error because the court below undertook to decree against him for certain goods without specifying or describing in any manner the same so as to enable him to know how or in what manner to comply with said order. The goods were described as such as he had carried in his stores, viz., dry goods, notions, and ladies' ready-made wear of the cost or wholesale price of $4,166.54. This was sufficiently definite."

In re Lesaius, 163 Fed. 614, (D. C. Pa.):

> "Neither is it necessary to do more than describe the property generally, as consisting, for instance, in the present case, of gentlemen's furnishings and clothing, such as the bankrupt was carrying. To require greater particularity would make such proceedings practically nugatory. *Ripon Knitting Works vs. Schreiber* (D. C.) 4 Am. Bankr. Rep. 299, 303, 101 Fed. 810. This would not be necessary even to convict upon indictment."

The findings and order in the case at bar are more definite than the finding of the court in *Stuart vs. Reynolds*, 204 Fed. 709, (C. C. A. 5th).

It is to be noted that counsel for bankrupts do not argue the matter in their brief.

VIII.

The last point is that the trial court found that finding No. 11 was established beyond all reasonable doubt. Just how such a finding could possibly prejudice the bankrupts is not apparent.

Schweer vs. Brown, supra, (C. C. A. 7th).

In the First Circuit the rule is that such findings need only be sustained by a preponderance of the evidence.

In re Cole, 144 Fed. 392, (C. C. A.).

In re Cramer, 175 Fed. 879, (D. C. Mass.).

In all other jurisdictions, we believe, the rule of the courts is that such findings must be sustained by evidence beyond a reasonable doubt.

In re D. Levy & Co., 142 Fed. 442, (C. C. A. 2nd.).

Kirsner vs. Taliaferro, supra, (C. C. A. 4th.).

Stuart vs. Reynolds, 204 Fed. 709, (C. C. A. 5th).

In re Rosser, 101 Fed. 562, (C. C. A. 7th).

Boyd vs. Glucklich, supra, (C. C. A. 8th).

In re Fuhrman, 220 Fed. 787, (C. C. A. 9th. Contempt).

In re Mayer, 98 Fed. 839, (D. C. Wis.).

In re Gottardi, 114 Fed. 328, (D. C. Calif.).

In re Adler, 129 Fed. 502, (D. C. Tenn.).

In re Feldser, 134 Fed. 307, (D. C. Pa.).

In re Walder, 16 A. B. R. 41, (D. C. Conn.).

In re Alphin & Lake Cotton Co., 134 Fed. 477, (D. C. Ark.).

In re Lesaius, 163 Fed. 614, (D. C. Pa.).

In re Mize, 172 Fed. 945, (D. C. Ala.).

In re Dickens, 175 Fed. 808, (D. C. Ala.).

In re Kreuger, 197 Fed. 124, (D. C. Ky.).

Ripon Knitting Works vs. Schreiber, supra, (D. C. Wash.).

Or that the evidence should be indisputable.

American Trust Co. vs. Wallis, 126 Fed. 464, (C. C. A. 3rd).

Or of unusual cogency.

In re Sax, 141 Fed. 223, (D. C. Pa.).

In re Nisenson, 182 Fed. 912, (D. C. N. J.).

Or clear and convincing.

Samel vs. Dodds, 142 Fed. 68, (C. C. A. 5th).

Or incontestible.

Rem. on Bankruptcy, Vol. 1, page 1137, Sec. 1842.

In their brief counsel practically admit such quality of proof essential. (See page 14).

Counsel for bankrupts seem to contend that the trial court found that the concealment of the $3,189 worth of merchandise was established by unsatisfactory testimony and refers to paragraph No. 9: "that the testimony is unsatisfactory as to what disposition was made of this merchandise." (R. 42). A glance at finding No. 9 shows that the evidence referred to is the concealment of *other* merchandise,

which was covered by the trustee's second petition, which the Court refused to enforce because he was not convinced beyond a reasonable doubt. The Court said: (R. 34).

> "The Court heard all of the evidence presented and carefully read all of the testimony taken before the referee. A consideration of this testimony convinces me beyond any question of doubt that the bankrupts did retain and fail to account for a sum not less than that found by the referee, $3,189.00."

Concerning the second petition the Court said: (R. 37).

> "While there is testimony which leads to the conclusion that the bankrupts have in their possession sums in excess of the amount found by the referee, the testimony is not clear and convincing, and I think the petition for return of $20,962.41 should therefore be denied."

IX.

We note that counsel for the bankrupts states that the findings do not support the conclusions and order of the Judge, (Brief, 7), but fail to find any discussion of the question or any cases in point.

CONCLUSION.

The petition alleging concealment and the findings of the court were drawn in accordance with the

decisions of this circuit and the overwhelming weight of authority of the federal courts generally. The lower court applied the most rigid rules to the case of the trustee; extended every protection to the bankrupts. Instead of ordering them to turn over approximately $20,000 worth of merchandise, he released them from the second petition because the evidence was not convincing beyond a reasonable doubt, and held them responsible for the $3,189.08 set forth in the first petition and established with the mathematical precision of two exact inventories, itemized by quantities and cost prices. Having had a fair hearing before both the referee and the district judge, who heard the testimony of the bankrupts on discharge and on the second petition covering largely the same evidence taken before the referee, and having been safeguarded by every rule of practice designed for the protection of such persons, an affirmance is respectfully prayed.

Respectfully submitted,

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Attorneys for Trustee.

No. 2804

In the United States Circuit Court of Appeals

For the Ninth Circuit

IN THE MATTER OF DAVID JACOBS and ISAAC JACOBS, Copartners doing business as JACOBS BROS.,

Bankrupts,

DAVID JACOBS and ISAAC JACOBS,

Petitioners,

vs.

S. T. HILLS, as Trustee of the Estate of DAVID JACOBS and ISAAC JACOBS, doing business as JACOBS BROS., Bankrupts,

Respondent.

Petition under Section 24b of the Bankruptcy Act to review and revise an order of the United States District Court for the Western District of Washington, Northern Division.

REPLY BRIEF OF PETITIONERS.

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No. 2804

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

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Respondent.

REPLY BRIEF OF PETITIONERS

The brief filed on behalf of the respondent having an arrangement somewhat different from our original brief, we shall follow, for convenience, the arrangement of the brief of respondent in our reply.

Before discussing, however, the points raised by respondent, we think it proper to call the attention of

the Court to the fact that the supposed reference, to the facts in the case or to the evidence taken before the referee contained in several places in the brief is a reference to counsel's claim of what the evidence contained and is contained in his petition for review by the District Judge. Whether the statements of evidence therein contained are accurate or not, we have not taken the pains to investigate. They had no place in the petition for review, and certainly the *ex-parte* statements of counsel in a pleading as to what evidence is contained in the record will not be accepted by this Court as a binding statement of what the evidence really is.

I.

We had supposed that on a petition to require the bankrupts to surrender property, the following facts only were in issue:

1. Is there property belonging to the bankrupt estate which has not been turned over to the trustee?

2. Has the bankrupt that property?

If the bankrupt has the property, it is absolutely immaterial whether he holds it in good faith or in bad faith. The question is wholly one of law. Is the property his or his trustee's?

We will concede that it is now a well established principle of law that in some criminal cases where the

question of intent is material, one may prove intent by showing acts similar to the one charged on the theory that the defendant is less likely to have committed a dozen acts with innocent intent than to have committed only one. This doctrine arose first in indictments for passing counterfeit coin. Manifestly, in that class of cases, it is easily understood that a defendant might have passed one counterfeit coin innocently, but when one continues to pile on other instances of counterfeit coin passed by the defendant, the innocence of the defendant seems less likely with each additional act. This doctrine has been extended somewhat in the late cases.

In the present case, however, there is no question of intent. As we have pointed out, the question is purely one of law. Had the bankrupts any property in their possession on the date the petition was filed which they did not turn over to their trustee? No matter how innocent they may have been, or no matter with what guilty intent they may have concealed it, the question still remains one of law unaffected by their intent.

There is no authority whatsoever for saying that the evidence as to the concealment of the merchandise was admitted by the referee. The reference of counsel to the record is again to his own statement of what the evidence contained and not to any report of the referee or finding of the Court. An examination of the report

of the referee found on pages 15-17 of the record shows that he carefully avoided making any such finding.

Counsel's argument that such other offense would aid the Court in arriving at a moral certainty that fraud was committed again confuses the issue in this case. As we have before pointed out, the question of fraud is wholly immaterial.

II.

The only argument of counsel under this heading is that the finding shows that the bankrupt has committed fraud. If he has, the statute provides a remedy. The record shows that his creditors have already had a portion of the relief which the law gives them. The discharge of the bankrupt has been denied. If he has been guilty of any other fraud which is punishable by the Act, there is a way to reach him. Certainly this Court is not going to permit itself to be used as a club in blackmailing the bankrupt into paying $3000 to his trustee which the trustee is not entitled to, because the bankrupt has been guilty of some other fraud. Once more, we must call the attention of the Court to the attempt of counsel to have the Court believe that there is in the record a statement of the facts or of the evidence produced before the referee by referring to his own pleading.

Nothing in the books could be more applicable to

the situation suggested by the brief of counsel than the words of Judge Seaman, in *In re Mayer*, 98 Fed. 840:

"For money or property traced to the possession or control of the bankrupt, concealed and withheld from the trustee, this provision is applicable, and must be summarily enforced. It is not applicable, however, to reach property beyond the present control of the bankrupt, and in the hands of third parties claiming title derived prior to the proceedings in bankruptcy, although the transaction is manifestly fraudulent. Nor can this means or provision be employed to punish for frauds committed by the bankrupt against the bankruptcy act, nor can it be used to coerce the bankrupt or transferees to make restitution of money or property previously transferred in fraud of the act. Frauds which are made criminal by the act are punishable only on conviction by the verdict of a jury, or on plea of guilty, and fraudulent transfers which have been consummated cannot be reached by this summary proceeding."

III.

To attempt to discuss each case cited by counsel under the second heading of his brief would be to extend this brief to a length which is wholly unwarranted. Almost all of the cases cited by counsel are contempt cases. This is particularly true of the Court of Appeal cases.

Kirsner vs. Talliaferro, 202 Fed. 52;
Stewart vs. Reynold, 204 Fed. 709;
In re Rosser, 105 Fed. 562.

The above are all contempt cases. In these cases it was held that before the bankrupt could be committed for contempt, there must be a finding that he had the

present ability to comply with the order. This does not touch the question raised in our brief that this question properly arises on a contempt proceeding and not on the petition to turn over.

We have carefully searched all the cases cited by counsel under this heading. In not a single case was the question ever raised or discussed. We shall not attempt to answer in detail all of the illustrations of counsel under this heading, practically all of his illustrations answer themselves.

V.

We have diligently searched our brief for anything whatsoever which might by the wildest stretch of imagination raise the point attributed to us by counsel under this heading, but we have been unable to find even the remotest suggestion of such proposition. It would, of course, be wholly inconsistent with our argument that the present ability of the bankrupts is immaterial.

VI.

We have attempted to show in our original brief that present possession of the property and present ability to comply with the order of the court are matters to be taken up in a contempt proceeding rather than in this. As we have shown, heretofore, the only cases in which this point was directly decided have

held that it is not proper at this stage of the proceeding. A number of cases are cited by counsel in which there were findings of present ability to perform. Many more could have been found. In none of them is the question raised as in this case. The only cases which appear to have raised this question are those in the Third Circuit, cited in our original brief.

VII AND VIII.

Once more counsel has raised a straw man for the purpose of knocking him down. We have made no contention in our brief as to the proposition discussed in this section. Except as a display of industry of counsel in examining cases, this part of his brief has no place in the case.

IX.

Although counsel makes no argument under this heading, there runs through all his brief an attempted reply to our argument that the findings did not support the conclusions. This is based largely on a reference to counsel's petition for review as stating the facts of the case.

In order to determine the proposition upon which the lower court disposed of the case, it is proper for the Court to examine the opinion of the trial Court.

In re Pettingill & Co. (C. C. A. 1st Circuit, 137 Fed. 840);

Samuel vs. Dodd (C. C. A. 5th Circuit, 142 Fed. 68).

If we examine the opinion of the trial Court we find that it is based wholly upon the difference in the tow inventories. All the Court did was to find that between these two inventories there was a discrepancy of the amount named in the order under review. In his order he made no finding as to the taking of any property by the bankrupts or the removal of any property by them.

An examination of finding No. nine in which the Court finds that the testimony is unsatisfactory will disclose that finding No. nine refers to the entirie period from February 3, 1916, down to the time that the property was taken by the sheriff. If this property was taken it must have been taken during that period, therefore, the finding of the Court that the testimony is unsatisfactory as to the disposition of the property during the time speciified in that finding refers directly to the matter in controversy herein, and is inconsistent with an order requiring the bankrupts to turn the property over.

We respectfully submit that the order of the District Judge under review should be reversed.

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